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Monday
April 29, 1991

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Briefings on How To Use the Federal Register
For information on briefings in Washington, DC, and New York City see announcement on the inside cover of this issue.

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WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: May 2, at 9:00 am
WHERE: Office of the Federal Register
First Floor Conference Room
1100 L Street, NW, Washington, DC
RESERVATIONS: 202–523–5240

NEW YORK, NY

WHEN: May 21, at 9:00 am
WHERE: 26 Federal Plaza
Room 305 B and C
New York, NY
RESERVATIONS: Federal Information Center
1–800–347–1997

WASHINGTON, DC

WHEN: May 23, at 9:00 am
WHERE: Office of the Federal Register
First Floor Conference Room
1100 L Street, NW, Washington, DC
RESERVATIONS: 202–523–5240 (voice); 202–523–5229 (TDD)

NOTE: There will be a sign language interpreter for hearing impaired persons at the May 23, Washington, DC briefing.

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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Federal Register
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Monday, April 29, 1991

Presidential Documents

Title 3—

The President

Proclamation 6280 of April 25, 1991

National Day of Prayer, 1991

By the President of the United States of America

A Proclamation

While we owe constant praise to Almighty God, we Americans have added cause for thanksgiving on this National Day of Prayer because of the recent coalition victory in the Persian Gulf. However, our joy and gratitude are inspired by far more than military triumph; on this special day of prayer held in the 200th year of our Bill of Rights, we give thanks for America's long and abiding legacy of freedom.

During the past 200 years, the ideals enshrined in our Bill of Rights have gained favor around the world. Even where tyrants have sought to rule by repression and terror, the spirit of freedom has endured. This is because, as Alexander Hamilton once noted, "the Sacred Rights of Mankind are not to be rummaged for among old parchments or musty records. They are written, as with a sunbeam, in the whole volume of human nature, by the Hand of the Divinity itself, and can never be erased or obscured by mortal power." Almighty God has granted each of us free will and inscribed in our hearts the unalienable dignity and worth that come from being made in His image.

Because our dignity and freedom are gifts of our Creator, we have a duty to cherish them, always using the latter to choose life and goodness. On this occasion we do well to pray for the wisdom and the resolve to do just that.

As an elevation of the soul's eyes to Heaven, prayer helps us to distinguish between liberty and license—to recognize that which is the grateful exercise of free will and that which is its corruption. Through prayer, we turn our hearts toward their real home and, in so doing, gain a sense of proper direction and higher purpose.

Faith and prayer are as important to guiding the conduct of nations as they are to individuals. We Americans, Abraham Lincoln once wrote, "have been the recipients of the choicest bounties of heaven." A nation so richly blessed has equally great responsibilities. Indeed, we have recently been reminded that "much will be asked of those to whom much has been given." The crucible of war has once again tested our Nation's character, and it has shown us both the need for and the power of prayer.

On this National Day of Prayer, let us acknowledge with heartfelt remorse the many times we have failed to appreciate the Lord's gifts and to obey His Commandments. Giving humble thanks for His mercy, let us vow to fulfill not only our responsibilities but also our potential as one Nation under God. Most important, let us make our prayers pleasing to Him by the regular practice of public and private virtue and by a genuine renewal of America's moral heritage. As Scripture says, "righteousness exalteth a nation, but sin is a reproach to any people."

Since the approval of the joint resolution of the Congress on April 17, 1952, calling for the designation of a specific day to be set aside each year as a National Day of Prayer, recognition of such a day has become a cherished annual event. Each President since then has proclaimed a National Day of Prayer annually under the authority of that resolution, continuing a tradition

that dates back to the Continental Congress. By Public Law 100–307, the first Thursday in May of each year has been set aside as a National Day of Prayer.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim May 2, 1991, as a National Day of Prayer. I urge all Americans to gather together on that day in homes and places of worship to pray, each after his or her own manner, for God's continued blessing on our families and our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this 25 day of April, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush.

[FR Doc. 91–10203
Filed 4–25–91; 4:02 pm]
Billing code 3195–01–M

Presidential Documents

Proclamation 6281 of April 25, 1991

National Organ and Tissue Donor Awareness Week, 1991 and 1992

By the President of the United States of America

A Proclamation

Through organ and tissue transplantation, thousands of Americans have been given the chance to enjoy fuller, longer lives. For example, bone marrow transplants have brought hope and healing to victims of cancer; new corneas have helped to bring sight to the blind; and the gift of a new heart, lung, or kidney has enabled many gravely ill Americans to gain improved health.

Much has been done in recent years to encourage public support of organ and tissue donation. Millions of Americans have learned about transplants through regional and local donor programs, voluntary health agencies, and the media. Government grants and our national transplantation system have also helped to encourage organ and tissue donation. Many Americans have responded to public awareness campaigns by signing a donor card or by indicating on their driver's licenses their willingness to donate.

However, despite our best efforts and the development of worldwide transplant programs, the waiting list of those in need of donated organs or tissues continues to grow. The Department of Health and Human Services reports that a new name is added to our national waiting list every 30 minutes. As many as 25 percent of the patients waiting for specific organs will die before a well-matched donor is found.

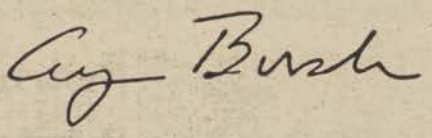
As compelling as these facts are, it is both fitting and proper that we pause to reflect carefully on organ and tissue transplantation. Every donation is a profound act of personal sacrifice and generosity. Every transplant underscores the power of medicine and the precious nature of human life. Because God has granted every person equal dignity and worth, because human life must always be treated with reverence and care, all Americans should give careful thought to becoming organ and tissue donors. This includes learning the facts about transplantation and discussing any moral and ethical concerns with one's family and doctor.

When pursued in a thoughtful and reverent manner, organ and tissue transplantation is a medical procedure that reflects not only the highly sophisticated nature of our Nation's health care system but also the traditional generosity and compassion of the American people.

To promote public awareness of organ and tissue donation, the Congress, by House Joint Resolution 218, has designated the weeks beginning April 21, 1991, and April 19, 1992, as "National Organ and Tissue Donor Awareness Week."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the weeks of April 21 through April 27, 1991, and April 19 through April 25, 1992, as National Organ and Tissue Donor Awareness Week. I ask health care professionals, public and private service organizations, and all Americans to join in supporting this humanitarian cause.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of April, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.



[FR Doc. 91-10204
Filed 4-25-91; 4:02 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6282 of April 25, 1991

To Modify Duty-Free Treatment Under the Generalized System of Preferences

By the President of the United States of America

A Proclamation

1. Pursuant to Title V of the Trade Act of 1974, as amended (the 1974 Act) (19 U.S.C. 2461 *et seq.*), the President may designate specified articles provided for in the Harmonized Tariff Schedule of the United States (HTS) as eligible for preferential tariff treatment under the Generalized System of Preferences (GSP) when imported from designated beneficiary developing countries.

2. Pursuant to section 504(c) of the 1974 Act (19 U.S.C. 2464(c)), beneficiary developing countries, except those designated as least-developed beneficiary developing countries pursuant to section 504(c)(6) of the 1974 Act, are subject to limitations on the preferential treatment afforded under the GSP. Pursuant to section 504(c)(5) of the 1974 Act, a country that is no longer treated as a beneficiary developing country with respect to an eligible article may be redesignated as a beneficiary developing country with respect to such article if imports of such article from such country did not exceed the limitations in section 504(c)(1) (after application of paragraph (c)(2)) during the preceding calendar year. Further, pursuant to section 504(d)(2) of the 1974 Act (19 U.S.C. 2464(d)(2)), the President may disregard the limitations provided in section 504(c)(1)(B) with respect to any eligible article if the appraised value of the total imports of such article into the United States during the preceding calendar year is not in excess of an amount which bears the same ratio to $5,000,000 as the gross national product of the United States for that calendar year (as determined by the Department of Commerce) bears to the gross national product of the United States for calendar year 1979.

3. Sections 502(b)(7) and 502(c)(7) of the 1974 Act (19 U.S.C. 2462(b)(7) and 2462(c)(7)) provide that a country that has not taken or is not taking steps to afford internationally recognized worker rights, as defined in section 502(a)(4) of the 1974 Act (19 U.S.C. 2462(a)(4)), is ineligible for designation as a beneficiary developing country for purposes of the GSP. Pursuant to section 504 of the 1974 Act, the President may withdraw, suspend, or limit the application of duty-free treatment under the GSP with respect to any article or with respect to any country upon consideration of the factors set forth in sections 501 and 502(c) of the 1974 Act (19 U.S.C. 2461 and 2462(c)).

4. Pursuant to sections 501, 503(a), and 504(a) of the 1974 Act (19 U.S.C. 2461, 2463(a), and 2464(a)), in order to subdivide and amend the nomenclature of existing provisions of the HTS to modify the GSP, I have determined, after taking into account information and advice received under section 503(a), that the HTS should be modified to adjust the original designation of eligible articles. In addition, pursuant to Title V of the 1974 Act, I have determined that it is appropriate to designate specified articles provided for in the HTS as eligible for preferential tariff treatment under the GSP when imported from designated beneficiary developing countries, and that such treatment for other articles should be terminated. I have also determined, pursuant to sections 504(a), (c)(1), and (c)(2) of the 1974 Act, that certain beneficiary countries should no longer receive preferential tariff treatment under the GSP with respect to certain eligible articles. Further, I have determined, pursuant to

section 504(c)(5) of the 1974 Act, that certain countries should be redesignated as beneficiary developing countries with respect to specified previously designated eligible articles. These countries have been previously excluded from benefits of the GSP with respect to such eligible articles pursuant to section 504(c)(1) of the 1974 Act. Last, I have determined that section 504(c)(1)(B) of the 1974 Act should not apply with respect to certain eligible articles pursuant to section 504(d)(2) of the 1974 Act.

5. Pursuant to sections 502(b)(7), 502(c)(7), and 504 of the 1974 Act (19 U.S.C. 2462(b)(7), 2462(c)(7), and 2464), I have determined that it is appropriate to provide for the suspension of preferential treatment under the GSP for articles that are currently eligible for such treatment and that are imported from Sudan. Such suspension is the result of my determination that Sudan has not taken and is not taking steps to afford internationally recognized worker rights, as defined in section 502(a)(4) of the 1974 Act (19 U.S.C. 2462(a)(4)).

6. Pursuant to sections 501 and 502 of the 1974 Act (19 U.S.C. 2461 and 2462), and having due regard for the eligibility criteria set forth therein, I have determined that it is appropriate to designate Czechoslovakia as a beneficiary developing country for purposes of the GSP.

7. Section 604 of the 1974 Act (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the provisions of that Act, and of other Acts affecting import treatment, and actions thereunder.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to Title V and section 604 of the 1974 Act, do proclaim that:

(1) In order to provide benefits under the GSP to specified designated eligible articles when imported from any designated beneficiary developing country, the HTS is modified as provided in Annex I to this proclamation.

(2)(a) In order to provide benefits under the GSP to specified designated eligible articles when imported from any designated beneficiary developing country, the Rates of Duty 1-Special subcolumn for the HTS subheadings enumerated in Annex II(a)(1) and II(b)(1) is modified by inserting in the parentheses the symbol "A" as provided in such Annexes to this proclamation.

(b) In order to provide benefits under the GSP to a specified designated eligible article and in order that a country should not be treated as a beneficiary developing country with respect to such eligible article for purposes of the GSP, the Rates of Duty 1-Special subcolumn for the HTS subheadings enumerated in Annex II(b)(2) is modified by inserting in the parentheses the symbol "A*" as provided in such Annex to this proclamation.

(c) In order to provide preferential tariff treatment under the GSP to certain countries which have been excluded from the benefits of the GSP for certain eligible articles imported from such countries, following my determination that a country previously excluded from receiving such benefits should again be treated as a beneficiary developing country with respect to such article, the Rates of Duty 1-Special subcolumn for each of the HTS provisions enumerated in Annex II(a)(2) and II(b)(3) to this proclamation is modified: (i) by deleting from such subcolumn for such HTS provisions the symbol "A*" in parentheses, and (ii) by inserting in such subcolumn the symbol "A" in lieu thereof.

(d) In order to provide that one or more countries should no longer be treated as beneficiary developing countries with respect to an eligible article for purposes of the GSP, the Rates of Duty 1-Special subcolumn for each of the HTS provisions enumerated in Annex II(b)(4) to this proclamation is modified: (i) by deleting from such subcolumn for such HTS provisions the symbol "A" in parentheses, and (ii) by inserting in such subcolumn the symbol "A*" in lieu thereof.

(3) In order to provide for the designation of Czechoslovakia as a beneficiary developing country for purposes of the GSP, to provide for the suspension of

preferential treatment under the GSP for Sudan, to provide that one or more countries which have not been treated as beneficiary developing countries with respect to an eligible article should be redesignated as beneficiary developing countries with respect to such article for purposes of the GSP, and to provide that one or more countries should no longer be treated as beneficiary developing countries with respect to an eligible article for purposes of the GSP, general note 3(c)(ii) to the HTS is modified as provided in Annex III to this proclamation.

(4) In order to provide for the continuation of previously proclaimed staged reductions on Canadian goods in the HTS provisions modified in Annex I to this proclamation, effective with respect to goods originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption, on or after the dates specified in Annex IV to this proclamation, the rate of duty in the HTS set forth in the Rates of Duty 1-Special subcolumn followed by the symbol "CA" in parentheses for each of the HTS subheadings enumerated in such Annex shall be deleted and the rate of duty provided in such Annex inserted in lieu thereof on the dates specified.

(5) In order to provide for the continuation of previously proclaimed staged reductions on products of Israel in the HTS subheadings modified in Annex I to this proclamation, effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the dates specified in Annex V to this proclamation, the rate of duty in the HTS set forth in the Rates of Duty 1-Special subcolumn followed by the symbol "IL" in parentheses for each of the HTS subheadings enumerated in such Annex shall be deleted and the rate of duty provided in such Annex inserted in lieu thereof on the dates specified.

(6) Any provisions of previous proclamations and Executive orders inconsistent with the provisions of this proclamation are hereby superseded to the extent of such inconsistency.

(7)(a) The amendment made by Annex III(a) of this proclamation shall be effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after the date of publication of this proclamation in the **Federal Register**.

(b) The amendments made by Annexes I(a), II(a), and III(b) of this proclamation shall be effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after May 1, 1991.

(c) The amendments made by Annexes I(b), II(b), and III(c) of this proclamation shall be effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after July 1, 1991.

(d) The amendments made by Annexes IV and V of this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the dates indicated for the respective Annex columns.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of April, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 91-10209
Filed 4-25-91; 4:16 pm]
Billing code 3195-01-M

Annex I

Notes:

1. Bracketed matter is included to assist in the understanding of proclaimed modifications.

2. The following supersedes matter now in the Harmonized Tariff Schedule of the United States (HTS). The subheadings and superior descriptions are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1-General", "Rates of Duty 1-Special", and "Rates of Duty 2", respectively.

(a) Effective with respect to articles both: (i) imported on or after January 1, 1976 and (ii) entered, or withdrawn from warehouse for consumption, on or after May 1, 1991.

(1) Subheading 2903.69.50 is superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	[Halogenated...:]				
	[Halogenated...:]				
	[Other:]				
"2903.69.05	3-Bromo-α,α,α-trifluorotoluene; 2-Chloro-5-bromo-α,α,α-trifluoro-toluene; and α-Chloro-3-methyltoluene	9.1%	Free (A,E) 2.8% (IL) 3.6% (CA)	15.4¢/kg + 71%"	
	[Other:]				
"2903.69.60	Other	9.1%	Free (E) 2.8% (IL) 3.6% (CA)	15.4¢/kg + 71%"	

(2) Subheading 2904.90.45 is superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	[Sulfonated...:]				
	[Other:]				
"2904.90.15	4-Chloro-3-nitro-α,α,α-trifluorotoluene; 2-Chloro-5-nitro-α,α,α-trifluoro-toluene; and 4-Chloro-3,5-dinitro-α,α,α-trifluoro-toluene	3.7¢/kg + 15.9%	Free (A,E,IL) 1.4¢/kg + 6.3% (CA)	15.4¢/kg + 51%"	
	[Other:]				
	[Aromatic:]				
"2904.90.47	Other	3.7¢/kg + 15.9%	Free (E,IL) 1.4¢/kg + 6.3% (CA)	15.4¢/kg + 51%"	

(3) Subheading 2908.10.30 is superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	[Halogenated...:]				
	[Derivatives...:]				
"2908.10.15	3-Hydroxy-α,α,α-trifluorotoluene	13.5%	Free (A,CA,E)	15.4¢/kg + 62%"	
	[Other:]				
"2908.10.35	Products described in additional U.S. note 3 to section VI	13.5%	Free (CA,E)	15.4¢/kg + 62%"	

Annex I (con.)
2 of 7

(a) (con.)

(4) Subheading 2916.39.10 is superseded by:

	[Unsaturated...:] [Aromatic...:] [Other:] Benzoic anhydride; tert-Butyl peroxybenzoate; m-Chloroperoxybenzoic acid; p-Nitrobenzoyl chloride; 2-Nitro-m-toluic acid; and 3-Nitro-o-toluic acid.....	6.7%	Free (CA,E,IL)	15.4¢/kg + 40.5%
2916.39.08	4-Chloro-3-nitrobenzoic acid.....	6.7%	Free (A,CA,E,IL)	15.4¢/kg + 40.5%"

(5) Subheading 2916.39.30 is superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	[Unsaturated...:] [Aromatic...:] [Other:]			
"2916.39.12	4-Chloro-3,5-dinitrobenzoic acid and its esters.....	13.5%	Free (A,E,IL) 5.4% (CA)	15.4¢/kg + 57%"
	[Other:] [Other:]			
"2916.39.40	Products described in additional U.S. note 3 to section VI.....	13.5%	Free (E,IL) 5.4% (CA)	15.4¢/kg + 57%"

(6) Subheading 2916.39.50 is superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	[Unsaturated...:] [Aromatic...:] [Other:]			
"2916.39.16	4-Chlorobenzoic acid.....	3.7¢/kg + 17.9%	Free (A,E,IL) 1.4¢/kg + 7.1% (CA)	15.4¢/kg + 57%"
	[Other:] [Other:]			
"2916.39.60	Other.....	3.7¢/kg + 17.9%	Free (E,IL) 1.4¢/kg + 7.1% (CA)	15.4¢/kg + 57%"

(7) Subheading 2921.42.50 is superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	[Amine-function...:] [Aromatic...:] [Aniline...:]			
"2921.42.24	Metanilic acid; and Sulfanilic acid.....	2.4¢/kg + 18.8%	Free (A,E,IL) 0.9¢/kg + 7.5% (CA)	15.4¢/kg + 60%"
	[Other:] [Other:]			
"2921.42.60	Other.....	2.4¢/kg + 18.8%	Free (E,IL) 0.9¢/kg + 7.5% (CA)	15.4¢/kg + 60%"

Conforming change: HTS headings 9902.30.28, 9902.30.30 and 9902.30.31 are each modified by striking out "2921.42.50" and inserting "2921.42.60" in lieu thereof.

Annex I (con.)
3 of 7

(a) (con.)

(8) Subheading 2921.43.50 is superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	[Amine-function...:]			
	[Aromatic...:]			
	[Toluidines...:]			
"2921.43.18	α,α,α-Trifluoro-m-toluidine; α,α,α-Trifluoro-o-toluidine; and α,α,α-Trifluoro-6-chloro-m-toluidine	2.4¢/kg + 18.8%	Free (A,E,IL) 0.9¢/kg + 7.5% (CA)	15.4¢/kg + 60%"
	[Other:]			
"2921.43.60	Other	2.4¢/kg + 18.8%	Free (E,IL) 0.9¢/kg + 7.5% (CA)	15.4¢/kg + 60%"

Conforming changes: HTS heading 9902.29.28 is modified by striking out "2921.43.50" and inserting "2921.43.18" in lieu thereof. HTS heading 9902.30.33 is modified by striking out "2921.43.50" and inserting "2921.43.60" in lieu thereof.

(9) Subheading 2924.29.45 is superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	[Carboxyamide-function...:]			
	[Cyclic...:]			
	[Other:]			
	[Aromatic:]			
"2924.29.02	Acetanilide	3.7¢/kg + 18.1%	Free (A,E,IL) 1.4¢/kg + 7.2% (CA)	15.4¢/kg + 58%"
	[Other:]			
	[Other:]			
	[Other:]			
"2924.29.47	Other	3.7¢/kg + 18.1%	Free (E,IL) 1.4¢/kg + 7.2% (CA)	15.4¢/kg + 58%"

Conforming changes: HTS heading 9902.30.67 is modified by striking out "2924.29.45" and inserting "2924.29.47" in lieu thereof.

(10) Subheading 8703.10.00 is superseded by:

	[Motor cars. :]			
"8703.10	Vehicles specially designed for traveling on snow, golf carts and similar vehicles:			
8703.10.10	Vehicles specially designed for traveling on snow	2.5%	Free (B,CA,E,IL)	10%
8703.10.50	Other	2.5%	Free (A,B,CA,E,IL)	10%"

(b) Effective with respect to articles both: (i) imported on or after January 1, 1976 and (ii) entered, or withdrawn from warehouse for consumption, on or after July 1, 1991.

(1) Subheading 0406.10.00 is superseded by:

	[Cheese.. :]			
"0406.10	Fresh cheese (including whey cheese), not fermented and curd:			
0406.10.10	Cheeses	10%	Free (A,E,IL) 7% (CA)	35%
0406.10.50	Other	10%	Free (E,IL) 7% (CA)	35%"

Annex I (con.)
4 of 7

(b) (con.)

(2) Subheading 0701.90.00 is superseded by:

	[Potatoes...:]				
"0701.90	Other:				
0701.90.10	Yellow (Solano) potatoes	0.77¢/kg		Free (A,E,IL) 0.5¢/kg (CA)	1.7¢/kg
0701.90.50	Other	0.77¢/kg		Free (E,IL) 0.5¢/kg (CA)	1.7¢/kg"

(3) Subheading 0710.80.95 is superseded by:

	[Vegetables...:]				
	[Other vegetables:]				
	[Other:]				
	[Reduced in size:]				
"0710.80.93	Okra	17.5%		Free (A,E,IL) 12.2% (CA)	35%
0710.80.97	Other	17.5%		Free (E,IL) 12.2% (CA)	35%"

(4) Subheading 2901.10.20 is superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	[Acyclic hydrocarbons:]				
	[Saturated:]				
"2901.10.30	n-Pentane and isopentane	5%		Free (A,CA,E,IL)	25%"
	[Other:]				
"2901.10.40	Derived in whole or in part from petroleum, shale oil or natural gas	5%		Free (CA,E,IL)	25%"

(5) Subheading 2904.90.10 is superseded by:

	[Sulfonated...:]				
	[Other:]				
	"Monochloromononitrobenzenes:				
2904.90.04	o-Nitrochlorobenzene; and p-Nitrochlorobenzene	10%		Free (A,E,IL) 4% (CA)	15.4¢/kg + 59%
2904.90.08	Other	10%		Free (E,IL) 4% (CA)	15.4¢/kg + 59%"

(6) Subheading 2907.29.50 is superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	[Phenols...:]				
	[Polyphenols:]				
	[Other:]				
"2907.29.20	4,4'-Biphenol; and tert-Butylhydroquinone	7.2%		Free (A,CA,E)	15.4¢/kg + 44%"
	[Other:]				
"2907.29.60	Other	7.2%		Free (CA,E)	15.4¢/kg + 44%"

Conforming change: HTS heading 9902.30.13 is modified by striking out "2907.29.50" and inserting "2907.29.60" in lieu thereof.

Annex I (con.)
5 of 7

(b) (con.)

(7) Subheading 2908.90.10 is superseded by:

	[Halogenated...:]			
	[Other:]			
	"Nitrophenols:			
2908.90.04	p-Nitrophenol	8.1%	Free (A,E,IL) 3.2% (CA)	15.4¢/kg + 51.5%
2908.90.08	Other	8.1%	Free (E,IL) 3.2% (CA)	15.4¢/kg + 51.5%"

(8) Subheading 2921.42.60 is superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	[Amine-function...:]			
	[Aromatic...:]			
	[Aniline...:]			
"2921.42.23	3,4-Dichloroaniline	2.4¢/kg + 18.8%	Free (A,E,IL) 0.9¢/kg + 7.5% (CA)	15.4¢/kg + 60%"
	[Other:]			
	[Other:]			
"2921.42.70	Other	2.4¢/kg + 18.8%	Free (E,IL) 0.9¢/kg + 7.5% (CA)	15.4¢/kg + 60%"

Conforming change: HTS headings 9902.30.28, 9902.30.30 and 9902.30.31 are each modified by striking out "2921.42.60" and inserting "2921.42.70" in lieu thereof.

(9) Subheading 2924.29.47 is superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	[Carboxyamide-function...:]			
	[Cyclic...:]			
	[Other:]			
	[Aromatic:]			
"2924.29.04	2-Methoxy-5-acetamino-N,N-bis(2-acetoxyethyl)aniline	3.7¢/kg + 18.1%	Free (A,E,IL) 1.4¢/kg + 7.2% (CA)	15.4¢/kg + 58%"
	[Other:]			
	[Other:]			
	[Other:]			
"2924.29.46	Other	3.7¢/kg + 18.1%	Free (E,IL) 1.4¢/kg + 7.2% (CA)	15.4¢/kg + 58%"

Conforming changes: HTS heading 9902.30.67 is modified by striking out "2924.29.47" and inserting "2924.29.46" in lieu thereof.

(10) Subheading 2929.10.50 is superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	[Compounds...:]			
	[Isocyanates:]			
"2929.10.30	3,4-Dichlorophenylisocyanate	2.9¢/kg + 16.2%	Free (A,CA,E,IL)	15.4¢/kg + 52%"
	[Other:]			
"2929.10.60	Other	2.9¢/kg + 16.2%	Free (CA,E,IL)	15.4¢/kg + 52%"

Conforming changes: HTS heading 9902.30.71 is modified by striking out "2929.10.50" and inserting "2929.10.60" in lieu thereof.

Annex I (con.)
6 of 7

(b) (con.)

(11) Subheading 2934.20.50 is superseded and the following subheadings inserted in numerical sequence in lieu thereof:

	[Other heterocyclic...:]			
	[Compounds...:]			
"2934.20.05	N-tert-Butyl-2-benzothiazolesulfenamide....	3.7¢/kg + 16.2%	Free (A,E,IL) 1.4¢/kg + 6.4% (CA)	15.4¢/kg + 52%"
	[Other:]			
	[Other:]			
"2934.20 60	Other.....	3.7¢/kg + 16.2%	Free (E,IL) 1.4¢/kg + 6.4% (CA)	15.4¢/kg + 52%"

(12) Subheading 3205.00.10 is superseded by:

	[Color lakes...:]			
"3205.00.20	Carmine.....	15%	Free (A,E,IL) 6% (CA)	72%
	Other:			
3205.00.40	Products described in additional U.S. note 3 to section VI.....	15%	Free (E,IL) 6% (CA)	72%"

Conforming change: The article description for subheading 3205.00.50 shall have the same degree of indentation as new subheading 3205.00.40 above.

(13) Subheading 3817.10.00 is superseded by:

	[Mixed alkylbenzenes...:]			
"3817.10	Mixed alkylbenzenes:			
3817.10.10	Mixed linear alkylbenzenes.....	1.1¢/kg + 17.3%	Free (E,IL) 0.4¢/kg + 6.9% (CA)	15.4¢/kg + 55%
3817.10.50	Other.....	1.1¢/kg + 17.3%	Free (A,E,IL) 0.4¢/kg + 6.9% (CA)	15.4¢/kg + 55%"

(14) Subheading 3823.90.29 is superseded by:

	[Prepared binders...:]			
	[Other:]			
	[Other:]			
	[Mixtures...:]			
"3823.90.25	Aqueous mixtures of triphenyl sulfonium chloride, diphenyl (4-phenylthio)phenyl sulfonium chloride and (thiodi-4,1-phenylene)bis-(diphenyl sulfonium) dichloride.....	3.7¢/kg + 13.6%	Free (A,E,IL) 1.4¢/kg + 5.4% (CA)	3.7¢/kg + 60%
3823.90.27	Other.....	3.7¢/kg + 13.6%	Free (E,IL) 1.4¢/kg + 5.4% (CA)	3.7¢/kg + 60%"

Conforming changes: HTS heading 9902.29.55 is modified by striking out "3823.90.29" and inserting "3823.90.27" in lieu thereof. HTS heading 9902.38.25 is modified by striking out "3823.90.29" and inserting "3823.90.27" in lieu thereof.

Annex I (con.)
7 of 7

(b) (con.)

(15) Subheading 5608.90.20 is superseded by:

	[Knotted netting...:]			
	[Other:]			
	[Other:]			
	"Of cotton:			
5608.90.23	Hammocks	16%	Free (A) 4.8% (IL) 11.2% (CA)	80%
5608.90.27	Other	16%	4.8% (IL) 11.2% (CA)	80%"

(16) Subheading 6204.39.40 is superseded by:

	[Women's or girls'...:]			
	[Suit-type jackets...:]			
	[Of other textile...:]			
	"Other:			
6204.39.60	Containing 70 percent or more by weight of silk or silk waste	6.7%	Free (A,E*,IL) 4.6% (CA)	65%
6204.39.80	Other	6.7%	Free (E*,IL) 4.6% (CA)	65%"

(17) Subheading 6204.49.00 is superseded by:

	[Women's or girls'...:]			
	[Dresses:]			
"6204.49	Of other textile materials:			
6204.49.10	Containing 70 percent or more by weight of silk or silk waste	7.5%	Free (A,E*,IL) 5.2% (CA)	65%
6204.49.50	Other	7.5%	Free (E* IL) 5.2% (CA)	65%"

Annex II

Modification in the HTS of an Article's Preferential Tariff Treatment under the GSP

(a) Effective with respect to articles both: (i) imported on or after January 1, 1976 and (ii) entered, or withdrawn from warehouse for consumption, on or after May 1, 1991:

(1) For the following HTS subheadings, in the Rates of Duty 1-Special subcolumn, insert in the parentheses following the "Free" rate the symbol "A," in alphabetical order:

0202.30.20	1602.49.20	6911.10.41
0203.22.10	2007.99.05	6911.10.45
0203.29.20	2007.99.10	7013.21.50
1602.41.20	2007.99.20	7013.31.50
1602.42.20	2007.99.25	

(2) For HTS subheading 2935.00.31, in the Rates of Duty 1-Special subcolumn, delete the symbol "A*" and insert an "A" in lieu thereof.

(b) Effective with respect to articles both: (i) imported on or after January 1, 1976 and (ii) entered, or withdrawn from warehouse for consumption, on or after July 1, 1991:

(1) For the following HTS subheadings, in the Rates of Duty 1-Special subcolumn, insert in the parentheses following the "Free" rate the symbol "A," in alphabetical order:

0807.10.60	2929.10.15	7801.99.90
1702.30.40	3606.90.60	7901.12.50
2208.90.50	3906.90.50	8533.10.00
2903.61.10	6912.00.41	8714.92.50
2903.61.30	7013.91.50	9608.10.00
2917.37.00	7801.10.00	

(2) For HTS 7901.11.00, in the Rates of Duty 1-Special subcolumn, insert in the parentheses following the "Free" rate the symbol "A*," in alphabetical order.

(3) For the following HTS provisions, in the Rates of Duty 1-Special subcolumn, delete the symbol "A*" and insert an "A" in lieu thereof:

1905.90.90	7605.19.00	8529.90.50
2005.80.00	7614.90.50	8527.11.11
2933.19.25	8302.10.90	9006.52.10
3402.90.30	8406.11.90	9019.20.00
4013.10.00	8406.19.90	9026.80.60
4802.51.10	8406.90.90	9031.40.00
4804.31.60	8419.11.00	9401.90.10
4818.90.00	8474.20.00	9603.30.40
7008.00.00	8507.90.40	
7113.20.21	8516.80.80	

(4) For the following HTS provisions, in the Rates of Duty 1-Special subcolumn, delete the symbol "A" and insert an "A*" in lieu thereof:

0710.80.70	3917.33.00	7401.10.00
0802.90.15	3926.90.87	8418.10.00
1901.90.90	4011.91.50	8428.90.00
2916.39.15	4104.31.20	8501.40.60
2929.90.50	6210.10.20	8535.40.00
3207.40.10	6307.90.60	8520.20.00
3402.90.10	7113.19.10	

Annex III

Modifications to General Note 3(c)(ii) of the HTS

(a) Effective with respect to articles both: (i) imported on or after January 1, 1976 and (ii) entered, or withdrawn from warehouse for consumption, on or after the date of publication of this proclamation in the Federal Register, general note 3(c)(ii)(A) is modified by inserting "Czechoslovakia" in alphabetic order in the enumeration of independent countries.

(b) Effective with respect to articles both: (i) imported on or after January 1, 1976 and (ii) entered, or withdrawn from warehouse for consumption, on or after May 1, 1991, general note 3(c)(ii)(D) is modified by deleting "2935.00.31 Yugoslavia" from such note.

(c) Effective with respect to articles both: (i) imported on or after January 1, 1976 and (ii) entered, or withdrawn from warehouse for consumption, on or after July 1, 1991:

(1) General note 3(c)(ii)(A) is modified by deleting "Sudan" from the enumeration of independent countries.

(2) General note 3(c)(ii)(B) is modified by deleting "Sudan" from the enumeration of least-developed beneficiary developing countries.

(3) General note 3(c)(ii)(D) is modified--

(i) by deleting the following HTS provisions and the countries set opposite these provisions:

1905.90.90	Mexico	8406.19.90	Israel
2005.80.00	Thailand	8406.90.90	Israel
2933.19.25	Guatemala	8419.11.00	Israel
3402.90.30	Mexico	8474.20.00	Philippines
4013.10.00	Mexico	8507.90.40	Mexico
4802.51.10	Mexico	8516.80.80	Mexico
4804.31.60	Mexico	8527.11.11	Malaysia
4818.90.00	Mexico	8529.90.50	Mexico
7008.00.00	Mexico	9006.52:10	Mexico
7113.20.21	Dominican Republic	9019.20.00	Mexico
7605.19.00	Venezuela	9026.80.60	Mexico
7614.90.50	Venezuela	9031.40.00	Israel
8302.10.90	Mexico	9401.90.10	Mexico
8406.11.90	Israel	9603.30.40	Mexico

(ii) by adding in numerical sequence, the following HTS provisions and countries set opposite them:

0710.80.70	Guatemala	4104.31.20	Thailand
0802.90.15	Mexico	6210.10.20	Mexico
1901.90.90	Mexico	6307.90.60	Mexico
2916.39.15	India	7113.19.10	Peru
2929.90.50	Bahamas	7401.10.00	Mexico
3207.40.10	Mexico	7901.11.00	Mexico
3402.90.10	Mexico	8418.10.00	Mexico
3917.33.00	Mexico	8428.90.00	Mexico
3926.90.87	Mexico	8501.40.60	Mexico
4011.91.50	Israel	8535.40.00	Mexico

(iii) by deleting the following countries opposite the following HTS provisions:

1005.90.20	Chile
1701.11.02	Dominican Republic

(iv) by adding, in alphabetical order, the following countries opposite the following HTS subheadings:

6406.10.65	Dominican Republic
7113.19.50	Israel
7402.00.00	Mexico

Annex IV

Effective with respect to goods originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the following tabulation.

For each of the following subheadings created by Annex I of this proclamation, on or after January 1 of each of the following years, the rate of duty in the Rates of Duty 1-Special subcolumn in the HTS that is followed by the symbol "CA" in parentheses is deleted and the following rates of duty inserted in lieu thereof on the date specified below.

HTS Subheading	1992	1993	1994	1995	1996	1997	1998
0406.10.10	6%	5%	4%	3%	2%	1%	Free
0406.10.50	6%	5%	4%	3%	2%	1%	Free
0701.90.10	0.4¢/kg	0.3¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	Free	Free
0701.90.50	0.4¢/kg	0.3¢/kg	0.3¢/kg	0.2¢/kg	0.1¢/kg	Free	Free
0710.80.93	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
0710.80.97	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
2903.69.05	1.8%	Free	Free	Free	Free	Free	Free
2903.69.60	1.8%	Free	Free	Free	Free	Free	Free
2904.90.04	2%	Free	Free	Free	Free	Free	Free
2904.90.08	2%	Free	Free	Free	Free	Free	Free
2904.90.15	0.7¢/kg + 3.1%	Free	Free	Free	Free	Free	Free
2904.90.47	0.7¢/kg + 3.1%	Free	Free	Free	Free	Free	Free
2908.90.04	1.6%	Free	Free	Free	Free	Free	Free
2908.90.08	1.6%	Free	Free	Free	Free	Free	Free
2916.39.12	2.7%	Free	Free	Free	Free	Free	Free
2916.39.40	2.7%	Free	Free	Free	Free	Free	Free
2916.39.16	0.7¢/kg + 3.5%	Free	Free	Free	Free	Free	Free
2916.39.60	0.7¢/kg + 3.5%	Free	Free	Free	Free	Free	Free
2921.42.23	0.4¢/kg + 3.7%	Free	Free	Free	Free	Free	Free
2921.42.24	0.4¢/kg + 3.7%	Free	Free	Free	Free	Free	Free
2921.42.70	0.4¢/kg + 3.7%	Free	Free	Free	Free	Free	Free
2921.43.18	0.4¢/kg + 3.7%	Free	Free	Free	Free	Free	Free
2921.43.60	0.4¢/kg + 3.7%	Free	Free	Free	Free	Free	Free
2924.29.02	0.7¢/kg + 3.6%	Free	Free	Free	Free	Free	Free
2924.29.04	0.7¢/kg + 3.6%	Free	Free	Free	Free	Free	Free
2924.29.46	0.7¢/kg + 3.6%	Free	Free	Free	Free	Free	Free
2934.20.05	0.7¢/kg + 3.2%	Free	Free	Free	Free	Free	Free
2934.20.60	0.7¢/kg + 3.2%	Free	Free	Free	Free	Free	Free
3205.00.20	3%	Free	Free	Free	Free	Free	Free
3205.00.40	3%	Free	Free	Free	Free	Free	Free
3817.10.10	0.2¢/kg + 3.4%	Free	Free	Free	Free	Free	Free
3817.10 50	0.2¢/kg + 3.4%	Free	Free	Free	Free	Free	Free

Annex IV (con.)

HTS Subheading	1992	1993	1994	1995	1996	1997	1998
3823.90.25	0.7¢/kg + 2.7%	Free	Free	Free	Free	Free	Free
3823.90.27	0.7¢/kg + 2.7%	Free	Free	Free	Free	Free	Free
5608.90.23	9.6%	8%	6.4%	4.8%	3.2%	1.6%	Free
5608.90.27	9.6%	8%	6.4%	4.8%	3.2%	1.6%	Free
6204.39.60	4%	3.3%	2.6%	2%	1.3%	0.6%	Free
6204.39.80	4%	3.3%	2.6%	2%	1.3%	0.6%	Free
6204.49.10	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
6204.49.50	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free

Annex V

Effective with respect to products of Israel which are entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the following tabulation.

For each of the following subheadings created by Annex I of this Proclamation, the rate of duty in the Rates of Duty 1-Special subcolumn in the HTS that is followed by the symbol "IL" in parentheses is deleted and the following rates of duty inserted in lieu thereof on the date specified below.

HTS Subheading	January 1, 1992	January 1, 1995
2903.69.05	0.9%	Free
2903.69.60	0.9%	Free
5608.90.23	1.6%	Free
5608.90.27	1.6%	Free

Memorandum of April 25, 1991

Actions Concerning the Generalized System of Preferences

Memorandum for the United States Trade Representative

Pursuant to subsections 502(b)(4) and 502(b)(7) and section 504 of the Trade Act of 1974, as amended (the 1974 Act) (19 U.S.C. 2462(b)(4), 2462(b)(7), and 2464), I am authorized to make determinations concerning the alleged expropriation without compensation by a beneficiary developing country, to make findings concerning whether steps have been taken or are being taken by certain beneficiary developing countries to afford internationally recognized worker rights to workers in such countries, and to modify the application of duty-free treatment under the Generalized System of Preferences (GSP) currently being afforded to such beneficiary developing countries as a result of my determinations.

Specifically, after considering a private sector request for a review concerning the alleged expropriation by Peru of property owned by a United States person allegedly without prompt, adequate, and effective compensation, without entering into good faith negotiations to provide such compensation or otherwise taking steps to discharge its obligations, and without submitting the expropriation claim to arbitration, I have determined that it is appropriate to continue to review the status of such alleged expropriation by Peru.

Second, after considering various private sector requests for a review of whether or not certain beneficiary developing countries have taken or are taking steps to afford internationally recognized worker rights (as defined in subsection 502(a)(4) of the 1974 Act (19 U.S.C. 2462(a)(4))) to workers in such countries, and in accordance with subsection 502(b)(7) of the 1974 Act (19 U.S.C. 2462(b)(7)), I have determined that Benin, the Dominican Republic, Haiti, and Nepal have taken or are taking steps to afford internationally recognized worker rights, and I have determined that Sudan has not taken and is not taking steps to afford such internationally recognized rights. Therefore, I am notifying the Congress of my intention to suspend the GSP eligibility of Sudan. Finally, I have determined to continue to review the status of such worker rights in Bangladesh, El Salvador, and Syria.

Further, pursuant to section 504 of the 1974 Act, after considering various requests for a waiver of the application of section 504(c) of the 1974 Act (19 U.S.C. 2464(c)) with respect to certain eligible articles, I have determined that it is appropriate to modify the application of duty-free treatment under the GSP currently being afforded to certain articles and to certain beneficiary developing countries.

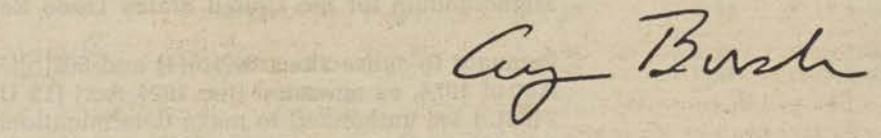
Specifically, I have determined, pursuant to subsection 504(d)(1) of the 1974 Act (19 U.S.C. 2464(d)(1)), that the limitation provided for in subsection 504(c)(1)(B) of the 1974 Act (19 U.S.C. 2464(c)(1)(B)) should not apply with respect to certain eligible articles because no like or directly competitive article was produced in the United States on January 3, 1985. Such articles are enumerated in the list of Harmonized Tariff Schedule of the United States (HTS) subheadings in Annex A.

Pursuant to subsection 504(c)(3) of the 1974 Act (19 U.S.C. 2464(c)(3)), I have also determined that it is appropriate to waive the application of section 504(c) of the 1974 Act with respect to certain eligible articles from certain beneficiary developing countries. I have received the advice of the United

States International Trade Commission on whether any industries in the United States are likely to be adversely affected by such waivers, and I have determined, based on that advice and on the considerations described in sections 501 and 502(c) of the 1974 Act (19 U.S.C. 2461 and 2462(c)), that such waivers are in the national economic interest of the United States. The waivers of application of section 504(c) of the 1974 Act apply to the eligible articles in the HTS subheadings and the beneficiary developing countries set opposite such HTS subheadings enumerated in Annex B.

These determinations shall be published in the **Federal Register**.

[FR Doc. 91-10216
Filed 4-2; 4:33 pm]
Billing code 3195-01-C



Annex A

HTS subheadings for which no like or directly competitive article was produced in the United States on January 3, 1985

HTS Subheading
0406.10.10
2924.29.04
3205.00.20
8527.11.11

Annex B

HTS subheadings and countries granted waivers of section 504(c) of the 1974 Act

HTS Subheading	Country
1602.41.20	Poland
2935.00.31	Yugoslavia
8517.10.00	Malaysia
8520.20.00	Malaysia
8527.11.11	Malaysia

Rules and Regulations

Federal Register
Vol. 56, No. 82
Monday, April 29, 1991

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[TB-90-008]

Tobacco Inspection; Growers' Referendum Results

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document contains the determination with respect to the referendum on the designation of Ocilla, Georgia, as a flue-cured tobacco market and merger with the currently designated market of Fitzgerald, Georgia, to become the consolidated market of Fitzgerald-Ocilla. A mail referendum was conducted during the period of March 11–15, 1991, among tobacco growers in the counties of Ben Hill, Berrien, Coffee, Irwin, Tift, Turner, Telfair, and Wilcox, Georgia, to determine producer approval of the designation of these two markets as one consolidated market. Eligible producers voted in favor of the designation. Therefore, for the 1991 and succeeding flue-cured marketing seasons, the Fitzgerald and Ocilla, Georgia, tobacco markets shall be designated as and called Fitzgerald-Ocilla. The regulations are amended to reflect this new designated market.

EFFECTIVE DATE: May 29, 1991.

FOR FURTHER INFORMATION CONTACT: Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, P.O. Box 96456, room 502 annex, Washington, DC 20090–6456, telephone (202) 447–2567.

SUPPLEMENTARY INFORMATION: A notice was published in the March 8, 1991, issue of the **Federal Register** (56 FR 9932) announcing that a referendum would be conducted among active flue-cured producers in the counties of Ben Hill, Berrien, Coffee, Irwin, Tift, Turner, Telfair, and Wilcox, Georgia, to ascertain if such producers favored the consolidated market.

The referendum was conducted among producers who were engaged in the production of flue-cured tobacco in the counties of Ben Hill, Berrien, Coffee, Irwin, Tift, Turner, Telfair, and Wilcox, Georgia, during the calendar year 1990. Ballots for the March 11–15 referendum were mailed to 729 producers. Approval required votes in favor of the proposal by two-thirds of the eligible voters who cast valid ballots. The department received a total of 259 responses: 214 eligible producers voted in favor of the consolidation of the Ocilla and Fitzgerald markets; 35 eligible producers voted against the consolidation; and 10 ballots were determined to be invalid.

The notice of referendum announced the determination by the Secretary that the consolidated market of Fitzgerald-Ocilla, Georgia, would be designated as a flue-cured tobacco auction market and receive mandatory, Federal grading of tobacco sold at auction for the 1991 and succeeding seasons, subject to the results of the referendum. The determination was based on the evidence and arguments presented at a public hearing held in Ocilla, Georgia, on November 1, 1990, pursuant to applicable provisions of the regulations issued under the Tobacco Inspection Act, as amended. The referendum was held in accordance with the provisions of the Tobacco Inspection Act, as amended (7 U.S.C. 511d) and the regulations set forth in 7 CFR 29.74.

This final rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "nonmajor" rule because it does not meet any of the criteria established for major rules under the executive order.

Additionally, in conformance with the provisions of Public Law 96–354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact upon small business. Most tobacco producers and many tobacco warehouses are small businesses as defined in the Regulatory Flexibility Act. It has been determined that this action will not have a significant impact on a substantial number of small entities, and will not substantially affect the normal movement of the commodity in the marketplace.

List of Subjects in 7 CFR Part 29

Administrative Practice and Procedure, Advisory Committees, Government Publications, Imports, Pesticides and Pests, Reporting and Recordkeeping Procedures, Tobacco.

For the reasons set forth in the preamble, 7 CFR part 29, subpart D, is amended as follows:

PART 29—[AMENDED]

Subpart D—Order of Designation of Tobacco Markets

1. The authority citation for 7 CFR part 29, subpart d, continues to read as follows:

Authority: Sec. 5, 49 Stat. 732, as amended by sec. 157(a)(1), 95 Stat. 374 (7 U.S.C. 511d).

§ 29.800 [Amended]

2. In § 29.8001, the table is amended by removing under item (ddd) in the column Auction Markets the word Fitzgerald and by adding a new entry (fff) to read as follows:

Territory	Types of tobaccos	Auction markets	Order of designation	Citation
•	•	•	•	•
(fff) Georgia	Flue-Cured	Fitzgerald-Ocilla	May 29, 1991	

Dated: April 24, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91-10071 Filed 4-26-91; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Parts 55, 56, 59, and 70

[Docket No. PY-91-001]

RIN 0581-AA19

Increase in Fees and Charges for Egg Products Inspection and Egg, Poultry, and Rabbit Grading

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is increasing the fees and charges for Federal voluntary egg products inspection and egg, poultry, and rabbit grading; as well as Federal mandatory egg products inspection holiday and appeal services. These fees and charges are increased to cover the increase in salaries of Federal employees, salary increases of State employees cooperatively utilized in administering the programs, and other increased Agency costs.

EFFECTIVE DATE: May 1, 1991.

FOR FURTHER INFORMATION CONTACT: Janice L. Lockard, Chief, Standardization Branch, 202-447-3506.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Regulatory Flexibility Act

This rule has been reviewed under USDA procedures implementing Executive Order 12291 and Department Regulation 1512-1 and has been classified a "non-major" rule under the criteria contained therein. It (i) will have an annual effect on the economy of less than $100 million; (ii) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local Government agencies, or geographic regions; or (iii) will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The AMS Administrator has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because (1) the fees and charges merely reflect, on a cost-per-unit-graded/inspected basis, a minimal increase in the costs currently borne by those entities utilizing the services and (ii) competitive effects are offset under the major voluntary programs (resident shell egg and poultry grading) through administrative charges based on the volume of product handled; i.e., the cost to users increases in proportion to increased volume.

The information collection requirements that appear in §§ 56.52(a)(4) and 70.77(a)(4) to be amended by this rule have been previously approved by the Office of Management and Budget and assigned OMB Control No. 0581-0128 and No. 0581-0127, respectively, under the Paperwork Reduction Act of 1980.

Background

The Agricultural Marketing Act of 1946, as amended, provides for the collection of fees approximately equal to the cost of providing voluntary egg products inspection and voluntary egg, poultry, and rabbit grading services. Likewise, the Egg Products Inspection Act requires the collection of fees to cover costs of holiday and appeal inspection services. Each fiscal year, these fees undergo a cost analysis to determine if they are adequate to recover the cost of providing the services. They were last increased effective May 1, 1990.

Projected operating costs are expected to increase in 1991. Federal employees' salaries increased by 4.1 percent in January 1991. Also, the cost of life insurance, health benefits, and Medicare increased by about 8 percent, Federal employee retirement fringe costs increased 12 percent, and salaries and fringe benefits of federally licensed State employees increased by about 9 percent.

Resident fees and administrative service charges will be increased approximately 6.5 percent. Resident fees cover Federal and State salaries, fringe benefits, relief, and other service-related costs. Administrative service charges apply to the costs of supervision and other overhead and administrative costs and are assessed on each case of shell eggs and each pound of poultry handled in plants using resident grading service. In 1990, the rate for these charges was established at $0.029 per case of shell eggs and $0.00029 per pound of poultry. These rates are changed to $0.031 per case of shell eggs and $0.00031 per pound of poultry. Also, these charges were set at a minimum of $145 and maximum of $1,450 per billing period for each official plant. These charges are changed to $155 and $1,550, respectively.

The hourly rate for nonresident voluntary grading and inspection service is increased from $27.28 to $28.64. The hourly rate for such services performed on Saturdays, Sundays, or holidays is increased from $27.36 to $29.68. The hourly rate for voluntary appeal gradings or inspections is increased from $23.20 to $24.48. The hourly rates for mandatory egg products inspection services are increased from $14.72 to $16.04 for holiday inspection and from $23.20 to $24.48 for certain appeal inspections.

Administrative charges for resident voluntary rabbit grading, resident voluntary egg products inspection, and nonresident voluntary continuous poultry and egg grading will continue to be based on 25 percent of the grader's or inspector's total salary costs. The minimum charge per billing period for these programs is increased from $145 to $155 per official plant.

Based on an analysis of costs to provide these services, a proposed rule to increase the fees for certain grading and inspection services for eggs, poultry, and rabbits was published in the Federal Register (56 FR 7592) on February 25, 1991. Comments on the proposed rule were solicited from interested parties until March 27, 1991.

Two comments were received in opposition to the proposed increase in fees. One commenter, a shell egg producer/handler, supported the voluntary egg grading program but expressed general concerns about the impact of the cholesterol and *Salmonella enteritidis* issues on egg producers. These general concerns are outside the scope of this action. The commenter also expressed concerns about escalating costs and specifically opposed the administrative costs based on 25 percent of the employee's salary that appears in § 56.54. As indicated in the February 25, 1991, proposal, the 25 percent rate is unchanged from previous years. The Agricultural Marketing Act of 1946, as amended, provides that fees collected be reasonable and as nearly as possible recover the cost of providing services. The overall fee structure has been designed accordingly, and periodic minimal increases in fees are necessarily commensurate with increases in Federal pay costs.

The second comment was received from a poultry producer who opposed the cap or maximum charge applicable to the administrative charge based on pounds produced as proposed in § 56.52. The commenter proposed that the per-pound charge be reduced and the administrative service charge cap be removed. The Poultry Division periodically evaluates the fee structure for the voluntary grading and inspection

programs. The establishment of a minimum and maximum charge for resident fees and administrative service charges was determined to be the most equitable and reasonable method to ensure recovery of the cost of providing services on a nationwide basis. This continues to be the case. Accordingly, no changes will be made.

Accordingly, the fee increase, as proposed, is adopted in this final rule.

Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**, because the fees need to be implemented on an expedited basis in order to minimize the period of time between the effective date of the Federal pay increase and the effective date of the fee increase. Also, the fee increases coincide with the next available billing cycle beginning on May 1, 1991.

List of Subjects

7 CFR Parts 55 and 56

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

7 CFR Part 59

Eggs and egg products, Exports, Food grades and standards, Food labeling, Imports, Polychlorinated biphenyls (PCB's), Reporting and recordkeeping requirements.

7 CFR Part 70

Food grades and standards, Food labeling, Poultry and poultry products, Rabbits and rabbit products, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, title 7, Code of Federal Regulations, parts 55, 56, 59, and 70 is amended as follows:

PART 55—VOLUNTARY INSPECTION OF EGG PRODUCTS AND GRADING

1. The authority citation for part 55 continues to read as follows:

Authority: Secs. 202–208 of the Agricultural Marketing Act of 1946, as amended (60 Stat. 1087–1091; 7 U.S.C. 1621–1627).

2. Section 55.510 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 55.510 Fees and charges for services other than on a continuous resident basis.

* * * * *

(b) Fees for product inspection and sampling for laboratory analysis will be based on the time required to perform the services. The hourly charge shall be $28.64 and shall include the time actually required to perform the sampling and inspection, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $29.68 per hour. Information on legal holidays is available from the Supervisor.

(d) The cost of an appeal grading, inspection, laboratory analysis, or review of a grader's or inspector's decision shall be borne by the appellant at an hourly rate of $24.48 for time spent performing the appeal and travel time to and from the site of the appeal, plus any additional expenses. If the appeal grading, inspection, laboratory analysis, or review of a grader's or inspector's decision discloses that a material error was made in the original determination, no fee or expenses will be charged.

3. Section 55.560 is amended by revising paragraph (a)(3) to read as follows:

§ 55.560 Charges for continuous inspection and grading service on a resident basis.

* * * * *

(a) * * *

(3) An administrative service charge equal to 25 percent of the grader's or inspector's total salary costs. A minimum charge of $155 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

PART 56—GRADING OF SHELL EGGS AND U.S. STANDARDS, GRADES, AND WEIGHT CLASSES FOR SHELL EGGS

4. The authority citation for part 56 continues to read as follows:

Authority: Secs. 202–208 of the Agricultural Marketing Act of 1946, as amended (60 Stat. 1087–1091; 7 U.S.C. 1621–1627).

5. Section 56.46 is amended by revising paragraphs (b) and (c) to read as follows:

§ 56.46 On a fee basis.

* * * * *

(b) Fees for grading services will be based on the time required to perform the services. The hourly charge shall be $28.64 and shall include the time actually required to perform the grading, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $29.68 per hour. Information on legal holidays is available from the Supervisor.

6. Section 56.47 is revised to read as follows:

§ 56.47 Fees for appeal grading or review of a grader's decision.

The cost of an appeal grading or review of a grader's decision shall be borne by the appellant at an hourly rate of $24.48 for the time spent in performing the appeal and travel time to and from the site of the appeal, plus any additional expenses. If the appeal grading or review of a grader's decision discloses that a material error was made in the original determination, no fee or expenses will be charged.

7. Section 56.52 is amended by revising paragraph (a)(4) to read as follows:

§ 56.52 Continuous grading performance on a resident basis.

* * * * *

(a) * * *

(4) An administrative service charge based upon the aggregate number of 30-dozen cases of all shell eggs handled in the plant per billing period multiplied by $0.031, except that the minimum charge per billing period shall be $155 and the maximum charge shall be $1,550. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

8. Section 56.54 is amended by revising paragraph (a)(2) to read as follows:

§ 56.54 Charges for continuous grading performed on a nonresident basis.

* * * * *

(a) * * *

(2) An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of $155 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

PART 59—INSPECTION OF EGGS AND EGG PRODUCTS (EGG PRODUCTS INSPECTION ACT)

9. The authority citation for part 59 continues to read as follows:

Authority: Secs. 2–28 of the Egg Products Inspection Act (84 Stat. 1620–1635; 21 U.S.C. 1031–1056).

10. Section 59.128 is amended by revising paragraph (a) to read as follows:

§ 59.128 Holiday inspection service.

(a) When an official plant requires inspection service on a holiday or a day designated in lieu of a holiday, such

service is considered holiday work. The official plant shall, in advance of such holiday work, request the inspector in charge in furnish inspection service during such period and shall pay the Service therefor at an hourly rate of $16.04 to cover the cost thereof.

* * * * *

11. Section 59.370 is amended by revising paragraph (b) to read as follows:

§ 59.370 Cost of appeals.

* * * * *

(b) The costs of an appeal shall be borne by the appellant at an hourly rate of $24.48, including travel time and expenses if the appeal was frivolous, including but not being limited to the following: The appeal inspection discloses that no material error made in the original inspection, the condition of the product has undergone a material change since the original inspection, the original lot has changed in some manner, or the Act or these regulations have not been complied with.

PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS AND U.S. CLASSES, STANDARDS, AND GRADES

12. The authority citation for part 70 continues to read as follows:

Authority: Secs. 202–208 of the Agricultural Marketing Act of 1946, as amended (60 Stat. 1087–1091; 7 U.S.C 1621–1627).

13. Section 70.71 is amended by revising paragraphs (b) and (c) to read as follows:

§ 70.71 On a fee basis.

* * * * *

(b) Fees for grading services will be based on the time required to perform such services for class, quality, quantity (weight test), or condition, whether ready-to-cook poultry, ready-to-cook rabbits, or specified poultry food products are involved. The hourly charge shall be $28.64 and shall include the time actually required to perform the work, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $29.68 per hour. Information on legal holidays is available from the Supervisor.

14. Section 70.72 is revised to read as follows:

§ 70.72 Fees for appeal grading, laboratory analysis, or examination or review of a grader's decision.

The costs of an appeal grading, laboratory analysis, or examination or review of a grader's decision will be borne by the appellant at an hourly rate of $24.48 for the time spent in performing the appeal and travel time to and from the site of the appeal, plus any additional expenses. If the appeal grading, laboratory analysis, or examination or review of a grader's decision discloses that a material error was made in the original determination, no fee or expenses will be charged.

15. Section 70.76 is amended by revising paragraph (a)(2) to read as follows:

§ 70.76 Charges for continuous poultry grading performed on a nonresident basis.

* * * * *

(a) * * *

(2) An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of $155 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

16. Section 70.77 is amended by revising paragraphs (a)(4) and (a)(5) to read as follows:

§ 70.77 Charges for continuous poultry or rabbit grading performed on a resident basis.

* * * * *

(a) * * *

(4) *For poultry grading.* An administrative service charge based upon the aggregate weight of the total volume of all live and ready-to-cook poultry handled in the plant per billing period computed in accordance with the following: Total pounds per billing period multiplied by $0.00031, except that the minimum charge per billing period shall be $155 and the maximum charge shall be $1,550. The minimum charge also applies where an approved application is in effect and no product is handled.

(5) *For rabbit grading.* An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of $155 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

Done at Washington, DC, on: April 24, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91-10070 Filed 4-26-91; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 985

[FV-91-261FR]

Expenses and Assessment Rate for Spearmint Oil Produced in the Far West

AGENCY: Agricultural Marketing Service.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate for the 1991–92 marketing year established under the spearmint oil marketing order. Funds to administer this program are dervied from assessments on handlers. This action is needed in order for the Spearmint Oil Administrative Committee (Committee), the agency responsible for the administration of the order, to have sufficient funds to meet the expenses of operating the program and to facilitate program operations. An annual budget of expenses is prepared by the Committee and submitted to the U.S. Department of Agriculture (Department) for approval.

EFFECTIVE DATES: June 1, 1991, through May 31, 1992.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2524–S, Washington, DC 20090–6456; telephone: (202) 475–3861.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 985 (7 CFR part 985) regulating the handling of spearmint oil produced in the Far West. The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

Thus, both statutes have small entity orientation and compatibility.

There are approximately nine handlers of spearmint oil produced in the Far West who are subject to regulation under the spearmint oil marketing order and approximately 253 producers of spearmint oil in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual revenues of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of spearmint oil producers and handlers may be classified as small entities.

The spearmint oil marketing order requires that the assessment rate for a particular marketing year shall apply to all assessable spearmint oil handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The members of the Committee are producers of the regulated spearmint oil. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of spearmint oil. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The recommended budget and rate of assessment are usually acted upon by the Committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committee will have funds to pay their expenses.

The Committee met on February 27, 1991, and unanimously recommended 1991–92 marketing order expenditures of $199,000 and an assessment rate of $0.08 per pound of spearmint oil. Assessment income for the 1991–92 marketing year is estimated at $172,000 based on shipments of 2,150,000 pounds of spearmint oil. Additionally, interest and incidental income for the 1991–92 marketing year is estimated at $11,000. In comparison, the 1990–91 marketing year budgeted expenditures were $187,000 and the assessment rate was $0.09 per pound of spearmint oil.

Major expenditure categories in the 1991–92 budget are $86,100 for program administration, $90,900 for salaries, and $22,000 for Committee travel and compensation. Comparable budgeted expenditures for the 1990–91 marketing year were $75,400, $86,000, and $26,000, respectively.

The Committee may expend operational reserve funds of $16,000 to meet budgeted expenses and additional reserve funds may be used to meet any deficit in assessment income. Also, any unexpended funds may be carried to the next marketing year as a reserve.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This action adds a new § 985.311 and is based on Committee recommendations and other information. A proposed rule on the expenses and assessment rate was published in the March 28, 1991, issue of the Federal Register (56 FR 12866). Comments on the proposed rule were invited from interested persons until April 8, 1991. No comments were received.

After consideration of the information and recommendation submitted by the Committee and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

This rule should be expedited because the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. In addition, handlers are aware of this action, which was recommended by the Committee at public meetings. Therefore, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C 553).

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 985.311 is added as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

§ 985.311 Expenses and assessment rate.

Expenses of $199,000 by the Spearmint Oil Administrative Committee are authorized and an assessment rate payable by each handler, in accordance with § 985.41, is established at $0.08 per pound of salable spearmint oil for the 1991–92 marketing year ending May 31, 1992. Unexpended funds may be carried over as a reserve.

Dated: April 23, 1991.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–10057 Filed 4–26–91; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 90–216]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Indiana from Class Free to Class A. We have determined that Indiana no longer meets the standards for Class Free status, but meets the standards for Class A status. This action imposes certain restrictions on the interstate movement of cattle from Indiana.

DATES: Interim rule effective April 23, 1991. Consideration will be given only to comments received on or before June 28, 1991.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies of written comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 90–216. Comments received

may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. John D. Kopec, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–6188.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and man, caused by bacteria of the genus *Brucella.*

The brucellosis regulations contained in 9 CFR part 78 (referred to below as the regulations) provide a system for classifying States or portions of States according to the rate of brucella infection present, and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C status are required to be placed under Federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle in the State or area for 12 months preceding the classification as Class Free. The Class C classification is for States or areas with the highest rate of brucellosis. Class B and Class A fall between these two extremes. Restrictions on moving cattle interstate become less stringent as a State approaches and achieves Class Free status.

The standards for the different classifications of States or areas entail maintaining (1) a cattle herd infection rate not to exceed a stated level during 12 consecutive months; (2) a rate of infection in the cattle population (based on the percentage of brucellosis reactors found in the Market Cattle Identification (MCI) program—a program of testing at stockyards, farms, ranches, and slaughtering establishments) not to exceed a stated level; (3) a surveillance system that includes testing of dairy herds, participation of all slaughtering establishments in the MCI program, identification and monitoring of herds at high risk of infection—including herds adjacent to infected herds and herds from which infected animals have been sold or received, and having an individual herd plan in effect within a stated number of days after the herd owner is notified of the finding of brucellosis in a herd he or she owns; and (4) minimum procedural standards for administering the program.

Before the effective date of this interim rule, Indiana was classified as a Class Free State in part because of a finding of no known brucellosis in cattle for at least 12 months. However, since a cattle herd in Indiana has been found to be affected with brucellosis, we have concluded that the State of Indiana no longer meets the standards for Class Free status.

In order to attain and maintain Class A status, a State or area must (1) not exceed a cattle herd infection rate, due to field strain of *Brucella abortus,* of 0.25 percent or 2.5 herds per 1,000 based on the number of reactors found within the State or area during any 12 consecutive months, except in States with 10,000 or fewer herds; (2) maintain a 12 consecutive months, MCI reactor prevalence rate not to exceed one reactor per 1,000 cattle tested (0.10 percent); and (3) have an approved individual herd plan in effect within 15 days of locating the source herd or recipient herd. After reviewing Indiana's brucellosis program records, we have concluded that Indiana meets the standards for Class A status.

Therefore, we are removing Indiana from the list of Class Free States or areas in § 78.41(a) and adding it to the list of Class A States or areas in § 78.41(b).

This action will place certain restrictions on the interstate movement of cattle from Indiana.

Immediate Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause to publish this interim rule without prior opportunity for public comment. Immediate action is warranted to prevent the interstate spread of brucellosis.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this interim rule in the **Federal Register.** After the comment period closes, we will publish another document in the **Federal Register,** including discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with the Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprise to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the brucellosis status of Indiana from Class Free to Class A increases certain testing and other requirements governing the interstate movement of cattle from Indiana. However, testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by this change. Cattle from certified brucellosis free herds are not affected by this change.

The group affected by this action will be herd owners in Indiana, as well as buyers and importers of Indiana cattle.

There are an estimated 37,000 cattle herds in Indiana which potentially would be affected by this rule, 98 percent of which are owned by small entities. Most of these herds are not certified-free. Test-eligible cattle offered for sale from other than certified-free herds must have a negative test under Class A status regulations. Based on experience, we estimate that approximately 47,000 test-eligible cattle will be tested annually. The average cost of testing cattle for brucellosis is approximately $7.00 per animal. If the total cost of testing is equally distributed among all herds in Indiana, this classification change would cost less than $9 per herd. Therefore, we have determined that changing Indiana's brucellosis status will not significantly affect market patterns.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have

a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are amending 9 CFR part 78 as follows:

1. The authority citation for part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 135f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 78.41 [Amended]

2. Section 78.41, paragraph (a) is amended by removing "Indiana,"

§ 78.41 [Amended]

3. Section 78.41, paragraph (b) is amended by adding "Indiana," immediately before "Iowa."

Done in Washington, DC, this 23rd day of April 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–10055 Filed 4–26–91; 8:45 am]

BILLING CODE 3410–10–M

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, 221 and 224

Regulations G, T, U and X; Securities Credit Transactions; List of Marginable OTC Stocks; List of Foreign Margin Stocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; determination of applicability of regulations.

SUMMARY: The List of Marginable OTC Stocks (OTC List) is comprised of stocks traded over-the-counter (OTC) in the United States that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List of Foreign Margin Stocks (Foreign List) represents foreign equity securities that have met the Board's eligibility criteria under Regulation T. The OTC List and the Foreign List are published four times a year by the Board. This document sets forth additions to or deletions from the previous OTC List and deletions from the previous Foreign List. Both Lists were published on January 31, 1991 (56 FR 3773) and effective on February 11, 1991.

EFFECTIVE DATE: May 13, 1991.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Securities Regulation Analyst, Division of Banking Supervision and Regulation, (202) 452–2781, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD) at (202) 452–3544.

SUPPLEMENTARY INFORMATION: Listed below are additions to or deletions from the OTC List. This supersedes the last OTC List which was effective February 11, 1991. Additions and deletions to the OTC List were last published on January 31, 1991 (56 FR 3773). A copy of the complete OTC List is available from the Federal Reserve Banks.

The OTC List includes those stocks that meet the criteria in Regulations G, T and U (12 CFR parts 207, 220 and 221, respectively). This determination also affects the applicability of Regulation X (12 CFR part 224). These stocks have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant regulation in the same fashion as exchange-traded securities. The OTC List also includes any OTC stock designated under a Securities and Exchange Commission (SEC) rule as qualified for trading in the national market system (NMS security). Additional OTC stocks may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable upon the effective date of their MNS designation. The names of these stocks are available at the Board and the SEC and will be incorporated into the Board's next quarterly publication of the OTC List.

Also listed below is the one deletion from the Foreign List. There are no new additions to the Foreign List, which was last published January 31, 1991 (56 FR 3773) and effective February 11, 1991. Stocks on the Foreign List are eligible for margin treatment at broker-dealers pursuant to a 1990 amendment to Regulation T (12 CFR part 220). The Foreign List includes those stocks that meet the criteria in Regulation T and are eligible for margin at broker-dealers on the same basis as domestic margin securities. A copy of the complete Foreign List is available from the Federal Reserve Banks.

Public Comment and Deferred Effective Date

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the Lists specified in 12 CFR 207.6 (a) and (b), 220.17 (a), (b), (c) and (d), and 221.7 (a) and (b). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of these Lists as soon as possible. The Board has responded to a request by the public and allowed a two-week delay before the Lists are effective.

List of Subjects

12 CFR Part 207

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 220

Banks, Banking, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Investments, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 221

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 224

Banks, Banking, Borrowers, Credit, Federal Reserve System, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 207.2(k) and 207.6(c) (Regulation G), 12 CFR 220.2(u) and 220.17(e) (Regulation T), and 12 CFR 221.2(j) and 221.7(c) (Regulation U), there is set forth below a listing of deletions from and additions to the OTC List, and the one deletion from the Foreign List.

Deletions From the List of Marginable OTC Stocks

Stocks Removed For Failing Continued Listing Requirements

Amerifirst Bank, A Federal Savings Bank (Florida)
$.01 par common
Asarco Incorporated
Warrants (expire 08–15–91)
Bankunited, A Savings Bank
Class A, $.01 par common
Barton Industries Inc.
$.01 par common
Bell Savings Holdings, Inc.
$1.00 par common
Cellcom Corp.
$.001 par common
Circadian, Inc.
$.01 par common
Computer Automation, Inc.
$.10 par common
Continental Savings of America (California)
$1.11 par common
Convex Computer Corporation
6% convertible subordinated debentures
County Bank, F.S.B.
$1.00 par common
Dartmouth Bancorp, Inc.
$1.00 par common
Distributed Logic Corporation
$.01 par common
Eastmaque Gold Mines Ltd.
No par common
Evansville Federal Savings Bank (Indiana)
$1.00 par common
Financial Benefit Group, Inc.
Class, A, $.01 par common
Financial Center Bancorp
No par common
Fingermatrix, Inc.
$.02 par common
First Executive Corporation
$2.00 par common
Series E, $1.00 par depositary preferred
Series F, $1.00 par depositary preferred
Series G, $1.00 par cumulative convertible preferred
Depositary Preference Shares
First Federal Savings Bank of Georgia
$1.00 par common
First Federal Savings Bank of Perry
$1.00 par common
First Woburn Bancorp, Inc.
$.10 par common
Flextronics, Inc.
$.01 par common
Granite Co-Operative Bank (Massachusetts)
$.10 par common
Imatron Inc.
Warrants (expire 11–12–01)
Infotechnology, Inc.
$.01 par common
International Capital Equipment Limited
$.05 par common
International Mobile Machines Corporation
$.10 cumulative convertible preferred
International Remote Imaging Systems, Inc.
No par common
Kasler Corporation
Convertible subordinated debentures (due 2007)
Kustom Electronics
$.10 par common
Lexicon Corporation
$.10 par common
Management Technologies, Inc.
$.01 par common
Mediagenic
No par common
Merchants Bancorp, Inc., The
$1.25 par common
Metro Airlines, Inc.
$.10 par common
Metrobank Financial Group, Inc.
$.10 par common
New England Bancorp, Inc.
$.25 par common
Olympic Savings Bank (Washington)
$1.00 par common
Oxidyne Group, Inc., The
$1.00 par common
Phoenix Medical Technology, Inc.
No par common
Picturetel Corporation
Warrants (expire 03–26–92)
Poseidon Pools of America, Inc.
$.01 par common
Qintex Entertainment, Inc.
$.001 par common
Satellite Information Systems Company
No par common
SBT Corp.
No par common
Schwartz Brothers, Inc.
Class A, $.10 par common
Sea Galley Stores, Inc.
$.05 par common
Silk Greenhouse, Inc.
$.01 par common
Sirco International Corp.
$.10 par common
Southland Corporation, The
15% cumulative exchangeable preferred stock
Southmark Corporation
Class A, $.01 par convertible preferred
Syntrex Incorporated
$.10 par common
Trustbank Savings, F.S.B.
$.01 par common
Tudor Corporation Ltd.
No par common
Vista Organization, Ltd., The
$.001 par common
Xyvision, Inc.
$.03 par common
Y&A Group, Inc.
$.0025 par common

Stocks Removed For Listing On A National Securities Exchange Or Being Involved In An Acquisition

Academy Insurance Group, Inc.
$.10 par common
Atico Financial Corporation
$1.00 par common
Attwoods PLC
American Depositary Receipts
Buckeye Financial Corp.
No par common
Care Plus, Inc.
$.01 par common
Comerica Incorporated
$5.00 par common
Series B, $4.32 par cumulative convertible preferred
Commercial Intertech Corp.
$1.00 par common
Continental Homes Holding Corp.
$.01 par common
E.R.C. Environmental & Energy Services Co., Inc.
$.05 par common
Geodyne Resources, Inc.
$.10 par common
Heartfed Financial Corporation
$.01 par common
Home Savings & Loan Association, Inc. (North Carolina)
$1.00 par common
Illinois Central Corporation
$.001 par common
Index Technology Corporation
$.10 par common
Interim Systems Corporation
$.01 par common
International Game Technology
$.01 par common
Liz Claiborne, Inc.
$1.00 par common
Lodgistix, Inc.
No par common
Mallard Coach Company, Inc.
$.01 par common
Martech USA, Inc.
$.01 par common
Mid-American Waste Systems, Inc.
$1.00 par common
Office Club, Inc.
No par common
Plaza Commerce Bancorp
No par common
Scripps, E.W. Company, The
Class A, $.01 par common

Terex Corporation
$.01 par common
Trimas Corporation
$.01 par common
TVX Broadcast Group, Inc.
$.01 par common
Visx, Incorporated
$.01 par common
Western Waste Industries
No par common
Wholesale Club, Inc., The
$1.00 par common
Wyoming National Bancorporation
$1.00 par common
Yankee Energy System, Inc.
$5.00 par common

Additions to the List of Marginable OTC Stocks

Ahold Limited
American Depositary Receipts
Alta Health Strategies, Inc.
$.01 par common
Angeion Corporation
$.01 par common
Atmel Corporation
No par common
Banc One Corporation
Series C, no par cumulative convertible preferred
Bobbie Brooks, Incorporated
$.001 par common
Carenetwork, Inc.
$.01 par common
Celtrix Laboratories, Inc.
$.01 par common
Citation Insurance Group
$.10 par common
Clinical Homecare Ltd.
$.03 par common
College Bound, Inc.
$.001 par common
Community Health Systems, Inc.
$.01 par common
Compania Boliviana De Energia
No par common
Coventry Corporation
$.01 par common
Cygnus Therapeutic Systems
No par common
DVI Financial Corporation
Warrants (expire 02–06–96)
Fedfirst Bancshares, Inc.
$.01 par common
First Commerce Bancshares, Inc.
$1.00 par common
Franklin Savings Bank, FSB (Michigan)
Warrants (expire 09–15–94)
Genzyme Corporation
Warrants (expire 12–31–94)
Grand Valley Gas Company
$.0125 par common
Health Management Associates, Inc.
Class A, $.01 par common
Homecorp, Inc.
$.01 par common
IAF Biochem International Inc.
No par common
Image Entertainment, Inc.
No par common
Input/Output, Inc.
$.01 par common
Intercontinental Bank
$2.00 par common
LXE, Inc.
$.01 par common
Magna Bancorp Inc.
$.01 par common
Medical Marketing Group, Inc.
$.01 par common
Merit Medical Systems, Inc.
No par common
PAC RIM Holding Corporation
$.01 par common
Penril Datacomm Networks, Inc.
$.01 par common
Pubco Corporation
$.01 par common
Quidel Corporation
$.001 par common
R&B, Inc.
$.01 par common
Regeneron Pharmaceuticals, Inc.
$.001 par common
SBE, Inc.
No par common
Simtek Corporation
$.01 par common
Warrants (expire 03–06–96)
Sonic Corporation
$.01 par common
Symix Systems, Inc.
$.01 par common
Takecare, Inc.
$.10 par common
Total Pharmaceutical Care, Inc.
No par common
TVX Gold, Inc.
No par common
USA Waste Services, Inc.
$.01 par common
Value Health, Inc.
No par common
Ventura Entertainment Group, LTD.
Class A Warrants (expire 05–31–93)
Video Jukebox Network, Inc.
$.001 par common
Zilog, Inc.
No par common

Deletion From the List of Foreign Margin Stocks

Polly Peck International, PLC
Ordinary shares, par value 10 p

By order of the Board of Governors of the Federal Reserve System, acting by its Staff Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.2(c)(18)), April 23, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91–10025 Filed 4–26–91; 8:45 am]

BILLING CODE 6210–01–M

12 CFR Parts 211 and 265

[Docket No. R-0703]

Regulation K—International Banking Operations; Rules Regarding Delegation of Authority

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The International Banking Act of 1978 (Pub. L. 95-369) requires the Board to review and revise its regulation governing the operation of Edge corporations every five years. In connection with this review, the Board has examined all of the provisions of Regulation K, 12 CFR part 211, which governs international banking operations, and has revised provisions of the regulation governing permissible activities of U.S. banking organizations abroad, including underwriting and dealing in equity securities; investments by U.S. banking organizations under the general consent procedures; portfolio investments; domestic powers of Edge corporations; capitalization and supervision of Edge corporations; debt-for-equity investments; qualifying foreign banking organizations; powers of foreign branches of member banks; and export trading companies. In addition, there are other and technical amendments to Regulation K and certain amendments to the Board's Rules Regarding Delegation of Authority, 12 CFR part 265.

EFFECTIVE DATE: Effective May 24, 1991, except in the case of § 211.5 (b)(1)(iii), (c)(1) and (f)(5), which are effective immediately.

FOR FURTHER INFORMATION CONTACT: Ricki Rhodarmer Tigert, Associate General Counsel (202/452-3428), Kathleen M. O'Day, Assistant General Counsel (202/452-3786), Kimberly A. Lynch, Attorney (202/452-3584), Deborah K. Burand, Attorney (202/452-3427), Legal Division; Michael G. Martinson, Assistant Director (202/452-3640), or Michael D. O'Connor, Senior Financial Analyst (202/452-3808), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The International Banking Act of 1978 ("IBA") requires the Board to review and revise its rules issued under section

25(a) of the Federal Reserve Act ("Edge Act") at least once every five years to ensure that the purposes of the Edge Act are being served in light of prevailing economic conditions and banking practices.

On August 1, 1990, following a comprehensive review of the regulation, the Board requested public comment on proposed revisions to Regulation K (55 FR 32424). The comment period, originally scheduled to expire September 30, 1990, was extended to October 14, 1990, with comments being received through January 17, 1991. The Board received 38 comments from outside the Federal Reserve System. Comments were received from 15 U.S. banks or bank holding companies; 4 Edge Act corporations; 5 foreign banking organizations; 5 law firms; and 7 trade associations. The Board also received comments from the United States Department of Commerce and the Commission of the European Communities.

The Board has considered the comments and, as a result of this further review, some of the revisions adopted differ from the amendments proposed. The Board has revised Regulation K in a number of areas, including: Equity securities activities abroad; the portfolio investment authority; the general consent provisions of the investment procedures; debt-for-equity investments; provisions related to Edge corporations, including domestic powers, capitalization, and the Board's supervisory authority; additions to the list of permissible activities abroad, including the authority to engage in certain swap transactions, to underwrite life and related insurance products, and to engage in futures commission merchant activities; qualifying foreign banking organizations; and standards for bank-affiliated export trading companies. Certain other amendments, including technical amendments, were also made to Regulation K.

Equity Securities Activities

The Board proposed the following revisions to the authority of U.S. banking organizations to underwrite equity securities abroad under Regulation K:

1. Raise the underwriting limit applicable to U.S. banking organizations, on a consolidated basis (excluding underwriting commitments by affiliated section 20 companies[1]), to the lesser of $60 million or 25 percent of the investor's Tier 1 capital, and eliminate the per subsidiary limitation of $2 million.

2. Permit banking organizations to underwrite 100 percent of the equity of any one issuer.

3. Permit banking organizations, on an organization-by-organization basis, to underwrite equity securities in excess of the $60 million limit where the banking organization would remain strongly capitalized after the authorized excess amount is permanently deducted from its capital.

4. Require banking organizations not currently engaged in equity underwriting or dealing activities to obtain the Board's specific consent before commencement of equity underwriting activities.

Under the proposal, any shares held by the investor or its affiliates 30 days after the close of the underwriting period would be considered to be held in the dealing account and would be required to conform to the permissible limits for dealing in equity securities. In addition, with respect to the proposal to permit underwriting in excess of the $60 million limit on an organization-by-organization basis, the Board requested comment on whether a parent bank holding company should be required to guarantee any losses that a bank may incur in connection with overline underwriting.

The Board also proposed the following revisions to the authority in Regulation K for dealing in equity securities abroad:

1. Raise the limit relating to equity securities of any one issuer held in trading or dealing accounts to the lesser of $30 million or 10 percent of the investor's Tier 1 capital.

2. For bank holding companies, lower the aggregate dollar amount of equity securities of companies engaged in impermissible activities that can be held in trading or investment accounts to 25 percent of Tier 1 capital. The aggregate limit for Edge corporations would remain 100 percent, although the relevant measure of capital would be Tier 1 capital instead of capital and surplus. Underwriting commitments would continue to be included in the aggregate limit for both bank holding companies and Edge corporations.

3. Apply both of the above limitations on a net basis by permitting some level of offset for hedged positions.

4. Expressly limit the dealing authority to equity securities "of foreign issuers."

5. Require banking organizations not currently engaged in equity underwriting or dealing activities to obtain the Board's specific approval before commencement of equity dealing activities.

The Board specifically solicited comment on its proposal to apply the dealing limit on a net basis, and particularly on the amount of offset that should be permitted for hedged positions.

Fourteen of the seventeen comments that addressed this topic supported liberalization of foreign securities powers. The liberalization was opposed by three comments. The comments that opposed liberalization stated that no expansion of foreign powers should be allowed because it would increase risk to the federal safety net. After review of all the comments the Board has adopted the proposed revisions with some modifications as described below.

Dollar Limitations on Underwriting and Dealing Authority

Many of the comments that favored expanded underwriting and dealing authority opposed the proposed dollar limitations on the underwriting and dealing authority. The comments maintained that dollar limitations, which were designed chiefly to regulate the investments of banking organizations in other companies, should not be applied to dealing and underwriting activities. The comments opposing expansion rejected any increase in current limits.

The comments supporting expansion particularly objected to the $30 million restriction on dealing in the shares of a single issuer, noting that there is a relationship between underwriting and dealing activities, especially in the extent to which dealing activities in the secondary market are necessary to support an underwriting. The comments maintained that inflexible dollar limits on dealing activities could interfere with their ability to use the expanded underwriting authority. A number of comments favored a limitation based solely upon a percentage of the investor's capital (*e.g.*, the capital of the Edge corporation or bank holding company parent of the underwriting subsidiary). The comments argued that limitations based on a percentage of the investor's capital more accurately represent the risk of a single issuer to an underwriter or dealer. Four comments requested case-by-case authority to exceed the dealing limits, similar to the proposed underwriting authority.

Although the dollar limitations in Regulation K were originally designed to deal primarily with long-term investments, they have also served the function of placing some limitation on total exposure arising from the securities business conducted in subsidiaries of U.S. banks. Moreover, because there are not the same firewalls for foreign securities affiliates of U.S. banks as apply to domestic section 20 companies, the dollar limitations operate as an additional restriction on the risks

[1] A "section 20 company" is a company owned by a bank holding company that is authorized under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) to engage in underwriting and dealing in corporate and other non-governmental securities.

associated with the combination of banking and securities operations in a single organization, complementing other supervisory and operational safeguards.

In adopting its proposal, the Board considered whether it would be appropriate to liberalize the authority to conduct securities activities abroad through subsidiaries of banks or whether to require any expanded securities activities to be conducted in the domestic structure through specially-regulated subsidiaries of bank holding companies. The Board's proposal was a compromise that involved some expansion of current limits, in the interests of furthering the international competitiveness of U.S. banks, without imposing a changing domestic structure abroad. Under the Board's proposal, activities of a broader nature than those permitted by Regulation K could still be conducted through the section 20 format.

The quantitative limits proposed by the Board represented a careful balancing of the Board's competing interests—the overseas competitiveness of U.S. banking organizations, concerns for the safety net with respect to activities conducted through a subsidiary of a U.S. bank, and recognition that decisions on the appropriate structure for broader powers for U.S. banking organizations should properly be made in a wider context. The expansion is relatively modest and should not present material risk to the safety net.

The Board has adopted the quantitative limitations on underwriting and dealing authority as proposed. Subject to the requirement of supervisory review that is discussed below, U.S. banking organizations may (1) underwrite, on a consolidated basis, the lesser of $60 million or 25 percent of the investor's Tier 1 capital, and (2) hold equity securities of any one issuer in trading or dealing accounts equivalent to the lesser of $30 million or 10 percent of the investor's Tier 1 capital. Incidental to the authority to engage in equity securities activities, foreign subsidiaries may issue equity derivatives products and engage in related equity derivatives activities, including swap transactions.

Requirement of Supervisory Review Before Commencement of Expanded Securities Activities

The proposal would have required only banking organizations not currently engaged in underwriting or dealing in equity securities to obtain the Board's specific consent before commencement of such activities. The comments were generally concerned about the purpose of the review, whether the requirement would be applied on an organization-by-organization basis or on a subsidiary-by-subsidiary basis, and the type of approval that would be required — prior notice or specific consent.

Under the proposal, any banking organization currently engaged in equity securities activities abroad would have automatically been able to take advantage of the expanded authority. After further review of this issue, the Board determined that while the new limits for underwriting and dealing in equity securities do not themselves raise significant supervisory concerns where proper operational and managerial controls are in place, the proposed authority could lead to an expansion in the volume of overseas securities activities. The Board recognized that such expansion could affect the adequacy of internal controls with respect to an existing foreign securities business and could also require that additional capital be allocated to those operations.

Accordingly, the Board has revised the regulation to require each banking organization that wishes to use the new underwriting and dealing limits in Regulation K to submit to a review by the Board of its foreign securities operations. Such a review will focus on the adequacy of internal controls and procedures for dealing with the new limits. The review will also evaluate whether the capital of existing foreign securities operations would be adequate to support any expansion of activity contemplated under the new limits. Banking organizations currently engaged in equity securities activities are authorized to continue such activities under the existing limitations. However, under Regulation K, significant investments in new or existing foreign securities affiliates require prior notice to the Board, and any investors would be expected to be in strong financial condition in order to make such investments.

Dealing in Securities of U.S. Issuers

The proposal would have continued to implement the current limitation that U.S. banking organizations may deal abroad only in equity securities "of foreign issuers." Comments strongly opposed this limitation, arguing that it inhibits the ability of U.S. banking organizations to underwrite equity securities of U.S. issuers because an underwriter needs to be able to support an underwriting through dealing or market-making activities in the secondary market. The Board has reviewed the statutory basis for this interpretation and has revised the proposal in this area.

The limitation reflected an interpretation of paragraph 8(c) of the Edge Act (12 U.S.C. 615), which prohibits an Edge corporation from purchasing and holding stock of any company that engages in business in the United States other than business incidental to its foreign business. Under that interpretation, dealing authority excluded dealing in shares of U.S. companies because the organization could be viewed as "holding" the shares in its dealing account in violation of the statute. Many of the comments noted that this limitation is not required by the Edge Act because dealers do not "hold" securities within the meaning of this provision.

The legislative history of the Edge Act demonstrates that the Congress was concerned that the ownership of U.S. equity securities by Edge corporations could permit Edge corporations to monopolize the businesses that they were intended to finance, primarily producers of agricultural products and raw materials for export. In light of the evolving nature of the business of dealing in equity securities, the growing internationalization of securities markets that has led to increased issuance of securities outside home markets, and the legislative history of the Edge Act, the Board is of the view that "holding" stock in a dealing account is not the kind of purchasing or controlling of securities at which the limitation in the Edge Act was aimed. Therefore, the Board has determined that subsidiaries of Edge corporations and bank holding companies may deal in equity securities of U.S. corporations abroad; however, U.S. banking organizations may only sell securities of U.S. issuers to, or buy such securities from, foreign persons, as that term is defined in the revised regulation. In addition, this authority may not be used to evade the restrictions applicable to the domestic securities activities of U.S. banking organizations.

This determination is in keeping with the requirements in the IBA, establishing the five-year review of Regulation K, that the Board consider ways of enhancing the ability of U.S. banking organizations to compete effectively with foreign-owned institutions. This determination with respect to the shares of U.S. issuers must, however, take account of the provisions of the Bank Holding Company Act ("BHC Act"), under which a U.S. banking organization may not generally acquire more than 5 percent of the voting shares and 24.9

percent of the total equity of a U.S. company. Therefore, a bank holding company may not exceed these limits on an aggregate basis, even where such shares are held in a foreign securities subsidiary and regardless of whether the ownership of the subsidiary is through a bank holding company or an Edge corporation that is a subsidiary of a bank. Banking organizations engaged in securities activities domestically through the section 20 structure are subject to these same limitations.

Applying the Dealing Limits on a Net Basis

The Board proposed to apply both the dollar limit on holding individual shares and the aggregate dollar portfolio investment limit, which is discussed below, on a net basis by permitting some offset for long and short positions in the same security and for positions hedged with derivative instruments. Nine comments responded to the Board's request for comment on the level of offset that would be permissible for positions hedged with various instruments. The comments generally urged the Board to permit flexibility in any formula used for determining permissible offsets and recommended against the implementation of any such formulation by regulation, because of the frequently changing nature of the market in equity securities and their derivatives. There were various suggestions: that the Board could permit any hedging technique approved by Board interpretation or staff opinion; that it could permit the Reserve Banks to approve netting techniques under delegated authority; or that it could allow netting issues to be handled through examination guidelines.

One comment expressed concern about the proposal to impose a percentage limit on hedging through options or futures contracts in the underlying security. Comments also expressed concern about the Board's failure to include in its proposal a variety of equity derivatives, such as options on stock indices and over-the-counter derivatives, as permissible offsetting instruments.

The Board is of the view that permitting an organization to establish individual netting techniques, subject to organization-by-organization approval, would give banking organizations the flexibility they desire while limiting the level of exposure to risks presented by dealing in equity securities and providing for regulatory review of hedging techniques. The Board has concluded that a limit, or "haircut," on the use of such techniques is necessary both to account for risk and to impose a ceiling on the dollar amount of equity securities that may be held by a U.S. banking organization.

Accordingly, the Board has adopted the following amendments:

(1) Regulation K has been revised to permit a banking organization to use netting techniques to hedge risks from positions in equity securities within certain limitations: long and short positions in the same security may be netted, and positions in equity securities may also be offset through the use of derivative instruments, such as futures, forwards, options, and similar instruments referenced to the same equity security (including matched indices), subject to the requirement that, for the purposes of the limits in Regulation K, the risk exposure associated with the holding of a position in a given equity will in no event be viewed as having been reduced by more than 75 percent through hedging;[2]

(2) Regulation K has further been revised to state that an organization's proposed specific hedging method for netting is subject to the Board's prior approval; and

(3) The Board's Rules Regarding Delegation of Authority (12 CFR part 265) have been revised to delegate to the Staff Director of Banking Supervision and Regulation the authority to approve specific hedging methods.

Including Underwriting Commitments and Shares Held in Dealing Accounts in the Aggregate Limits on Impermissible Investments

Both the current regulation and the proposal include underwriting commitments and shares held in dealing accounts in the aggregate limit on ownership of "impermissible" equity securities — generally, equity securities of a company engaged in nonfinancial activities. The aggregate limit is currently 100 percent of the investor's capital and surplus. As noted above and discussed in greater detail below, the Board proposed to lower the aggregate limit to 25 percent of the investor's Tier 1 capital when the investor is a bank holding company.[3]

A number of comments objected to including underwriting commitments and equity securities held in dealing accounts in this aggregate limit. The comments noted that there is a significant difference between, on the one hand, underwriting and dealing in shares that are generally held for a short period and marked-to-market daily, and, on the other hand, portfolio investments that are held for a longer period and recorded at historic cost.

The Board has determined that it is appropriate to continue to include underwriting commitments and equity securities held in dealing accounts in the aggregate limit on impermissible investments. The limit is intended to restrict the total exposure of U.S. banking organizations to the risks presented by equity holdings in nonfinancial companies. Underwriting commitments and equity securities held in dealing accounts are, in particular, subject to the risk of rapid changes in market values. For these reasons, underwriting commitments for equity shares and shares held in dealing accounts are included in the aggregate limit.

One comment requested that, at a minimum, underwriting commitments in excess of $60 million, as may be authorized on an organization-by-organization basis, should not be included in the aggregate amount limitations because such commitments would already have been counted against capital specifically earmarked for that purpose. The Board agrees that because the risk of such commitments would be addressed by the capital deduction, underwriting commitments in excess of $60 million are excluded from the aggregate dollar limits on impermissible investments. Given this exclusion and the authority for shares held in dealing accounts to be netted for purposes of determining compliance with this limit, which is discussed above, the Board does not believe that the inclusion of underwriting commitments and shares held in dealing accounts in the aggregate limitation on impermissible investments will be unduly burdensome with respect to equity underwriting and dealing activities.

Limiting Voting Shares of a Single Issuer Held in Dealing Accounts to 19.9 Percent

As discussed below with respect to portfolio investments, Regulation K prohibits an investor or its affiliates from holding 20 percent or more of the voting shares of a company engaged in impermissible activities. In the past this limitation has included underwriting commitments and shares held in dealing accounts, as well as shares held in investment accounts. The Board proposed to exclude underwriting commitments for securities from the 20 percent limit in order to permit U.S. banking organizations to compete more

[2] Thus, the maximum fully-hedged long position in a single stock could be $120 million — the $30 million dealing limit divided by the 25 percent haircut. Stated otherwise, if 25 percent of the risk is always retained then the maximum fully-hedged position is four times the $30 million dealing limit.

[3] The investor can be a bank holding company, Edge corporation, or foreign bank subsidiary of a member bank.

effectively, especially in underwriting initial public offerings, and has adopted this amendment as proposed.

The comments supported the proposal to exclude underwriting commitments from the 20 percent limit but opposed the continuing inclusion of shares held in dealing accounts in the limitation. The Board has, however, determined that it is appropriate to continue to include shares held in dealing accounts in the limitation on equity ownership of a company engaged in impermissible activities. Limiting the total percentage of an issuer's shares that may be held by a U.S. banking organization in both dealing and investment accounts assures that a U.S. banking organization's interest in a nonfinancial company remains at a level commensurate with a passive investment.[4] Without such limitation, there is a potential for evasion of the prohibition on exercising control over nonfinancial companies, through holding substantial blocks of equity in both an investment and dealing account. The 19.9 percent limitation should not inhibit underwriting activities because, as discussed below, a banking organization would have 90 days after the payment date for an underwriting to sell down any excess position obtained in connection with an underwriting to a position that meets the proposed limit or to seek the Board's approval to retain the shares.

To address concerns that dealing accounts should not be used to disguise securities held as investments, one comment proposed that the Board require that any securities held in a dealing account for more than a certain period of time, such as 90 days, be reported to the appropriate Federal Reserve Bank with an explanation of the dealer's strategy for disposing of the securities. The comment suggested that this procedure would be a preferable alternative to limiting the percentage of shares of an individual company that may be held in dealing and portfolio investment accounts. The Board does not consider this proposal an adequate substitute for the percentage limits on ownership of shares of a nonfinancial company. Moreover, the Board generally would not expect shares to be held in a dealing account longer than 90 days. In the event shares are held longer than 90 days in a dealing account, Regulation K is amended to require such holdings to be reported to senior management of the banking organization.

Underwriting Period

Under the Board's proposal, a banking organization would be permitted to underwrite 100 percent of the equity securities of an issuer, provided that 30 days after the close of the underwriting period the underwriter and its affiliates together do not hold in their dealing and investment accounts more than the permissible percentage and dollar amounts of an issuer's shares.

Most comments opposed the 30-day limitation, contending that it takes significantly longer than 30 days to distribute an equity issue outside the United States, where markets are not as developed, and thus not as deep or broad, as the market in this country. A number of the comments noted that a short underwriting period after which positions must be sold down to the dealing limits could require U.S. banking organizations to dispose of securities at firesale prices. Accordingly, many of the comments requested an underwriting period of at least 90 days, with some asking for up to six months. Comments also requested that the Board clarify what would constitute the end of the underwriting period.

To address the concerns expressed in the comments, the Board has revised Regulation K to require underwriting positions to be sold-down to the dealing limits within 90 days after the payment date for the underwritten securities. Market participants have stated that the term "payment date" is clearly understood to mean the date on which the issuer receives the net proceeds of the underwriting from the underwriters. Thus, the use of the term "payment date" will provide clarity in the regulation. The Board has adopted a 90-day period instead of a 30-day period to reflect the fact that foreign markets may not be as liquid as U.S. markets and typically have longer underwriting periods.

Underwriting in Excess of $60 Million

The Board proposed to permit banking organizations on an organization-by-organization basis to underwrite issues in excess of the $60 million consolidated limitation, provided that the banking organization remains strongly capitalized after a deduction from its regulatory capital of the amount by which its underwriting limit exceeds $60 million. The Board specifically requested comment on whether to require a guarantee from the bank holding company parent for losses to a subsidiary bank when underwriting activities are conducted under the bank ownership chain.

The comments generally favored the proposal because it would provide U.S. banking organizations with greater flexibility in their foreign underwriting business. The comments generally objected, however, to the requirement of a permanent deduction of the entire overline amount from the banking organization's regulatory capital. A number of comments noted that to require a deduction of the overline amount on a permanent basis would be inefficient because an organization's use of the full overline amount would be sporadic.

The Board has adopted the proposed authority for underwriting in excess of $60 million, including the requirement of a capital deduction for the entire stand-by capability. The $60 million limit establishes a ceiling on potential loss from a particular underwriting, and the requirement of a capital deduction for amounts above $60 million helps ensure that the safety net is not unduly exposed to the additional risks of equity securities activities beyond that amount. The alternative to a permanent deduction from regulatory capital of the maximum overline amount would be to deduct the amount on a transaction-by-transaction basis. A number of comments dismissed the approach of authority on a transaction-by-transaction basis as unworkable and as likely to interfere too much with the daily operations of an underwriting subsidiary.

Several comments noted that the "strongly capitalized" requirement was vague. In the Board's view, "strongly-capitalized" means a risk-based capital level well in excess of the Basle standards after the overline amount is deducted. As in the case of domestic section 20 subsidiaries, the capital deduction is required to be evenly distributed with 50 percent from Tier 1 capital and 50 percent from Tier 2 capital. Approval will be granted on an organizational basis to ensure that, when the overline activity is conducted by a subsidiary of a bank, the bank as well as the bank holding company remain "strongly-capitalized." Thus, the deduction from capital will be made on a consolidated basis, including from the bank's capital, when the underwriting subsidiary is held under a bank, as well as from the parent bank holding company's capital. Moreover, excess capital in other parts of the banking organization cannot substitute for capital in the bank for purposes of this requirement.

[4] As noted below in the discussion on portfolio investments, Regulation K has been amended to specify explicitly that total equity ownership in a foreign company is limited to 40 percent. Nonvoting shares of a nonfinancial company held in a dealing account are included in this limitation.

Four comments responded to the Board's request for comment on whether a bank holding company parent should be required to guarantee a bank subsidiary against losses resulting from securities activities conducted indirectly by the bank. All four comments opposed the requirement of a parent guarantee as unnecessary. One of these comments also stated, however, that a requirement for a parent guarantee was preferable to the requirement of a capital deduction.

As noted above, the deduction from regulatory capital will be made from the capital of both the parent bank, where relevant, and the parent bank holding company. Further, overline authority will be granted only on an organization-by-organization basis in order to ensure that the banking organization, including a parent bank of an underwriting subsidiary, is sufficiently strong to conduct expanded underwriting activities in an indirect subsidiary. Given these safeguards, the Board believes that a bank will be adequately shielded from losses that might result from indirect equity underwriting activities based on the overline authority and that the holding company guarantee is therefore unnecessary. Accordingly, Regulation K does not include the requirement of a separate guarantee by the parent for use of overline authority.

Other Equity Securities Issues

Under the Board's proposal, underwriting commitments of affiliated section 20 companies would be excluded from the consolidated limit of the lesser of $60 million or 25 percent of Tier 1 capital. Two comments noted their support for this proposal but recommended that the Board similarly exempt equity shares held by affiliated section 20 subsidiaries from the other limitations in Regulation K, such as the dollar limitations on dealing authority and other limits applicable to dealing accounts. The Board has adopted both its proposal and clarifications that exclude shares held by affiliated section 20 subsidiaries from the dollar amount limitations on dealing authority and the aggregate limit on impermissible investments applicable to dealing accounts. However, shares held in dealing accounts of affiliated section 20 subsidiaries must be included in determining compliance with the percentage limitations under Regulation K on voting and total equity ownership of companies engaged in impermissible activities.

In addition, one comment requested that the Board modify the restriction on purchases and sales of assets applicable to section 20 companies to clarify that a foreign securities subsidiary may subunderwrite a portion of its underwriting liability to its section 20 affiliate and transfer securities to the latter in connection with the underwriting. The Board does not believe that the revision of Regulation K is the appropriate context in which to amend the restrictions applicable to section 20 companies.

Portfolio Investment Authority

Regulation K currently permits U.S. banking organizations to make a passive portfolio investment in less than 20 percent of the voting shares of a foreign company without regard to the nature of its non-U.S. activities.[5] The regulation does not currently expressly limit total equity ownership — that is, ownership of voting and non-voting equity shares — although there is a requirement that the investment be non-controlling. The regulation also currently imposes an aggregate limit on all investments in companies engaged in impermissible activities (including securities held in trading or dealing accounts and underwriting commitments for shares) of 100 percent of the investor's capital and surplus. An investor is either a bank holding company, Edge corporation, or foreign bank subsidiary of a member bank, depending upon which entity holds the investment. The Board proposed a number of amendments to this authority.

First, the Board proposed to limit the total equity investment a U.S. banking organization would be able to make under the portfolio investment authority to 24.9 percent, which was derived from the limit on total equity ownership for non-controlling investments under Regulation Y. Unlike domestic non-controlling investments, however, up to 19.9 percent of the equity could be in the form of voting shares as currently provided in Regulation K. In addition, the Board proposed an exception to the 24.9 percent total equity limit to permit banking organizations to make small portfolio investments in up to 40 percent of the total equity of a company, provided that the total amount of equity investments in, and loans to, the foreign company would not exceed the proposed general consent limit of $25 million.

Second, the Board proposed to define "equity" to encompass various forms of instruments conferring rights of ownership, including loans that give rights to participate in the profits of an organization, and, as currently under Regulation K, subordinated debt when the investor also holds shares of the company. This approach recognizes that many types of hybrid instruments confer ownership interests that are equivalent to equity interests. The proposal also provided, however, that an investor could seek a specific determination from the Board that participating loans or subordinated debt would not be considered equity in the circumstances of a particular investment.

Third, the Board proposed to lower the aggregate portfolio investment authority for bank holding company investors to 25 percent of the investor's Tier 1 capital.

The Board received thirteen comments on the proposed revisions to the portfolio investment authority. Two comments opposed any authority for U.S. banking organizations to make investments in nonfinancial companies. The other eleven comments opposed various aspects of the proposal as too restrictive. In light of the comments, the Board has modified the original proposal and has revised the portfolio investment provisions as described below.

Total Equity Ownership

Eight comments opposed the proposed 25 percent total equity limitation on investments in a nonfinancial company when the organization's exposure to the company exceeds $25 million. The comments generally disagreed with the Board's position that large equity interests may impair credit judgments, with several comments noting that the procedures and approvals required in most banks for investments and credit judgments are entirely separate and that credit judgments are required to stand on their own.

The Board has revised the portfolio investment provisions to limit total equity ownership of a nonfinancial company to 40 percent, regardless of the size of the investment. This approach is consistent with interpretations of the current provisions of Regulation K that limited total equity positions in portfolio investments to 40 percent, a number derived from the maximum limitation on debt-for-equity investments in private sector, nonfinancial companies. The Board has adopted a 40 percent limitation for foreign portfolio

[5] As noted in the discussion on equity securities activities above, this limitation also previously included underwriting commitments for voting shares and voting shares held in dealing accounts. As Regulation K has been revised, underwriting commitments are excluded in determining compliance with the 19.9 percent limitation on voting shares and the 40 percent limitation on total equity of companies engaged in impermissible activities.

investments, rather than the domestic 24.9 percent limitation, in recognition that U.S. banks compete abroad with foreign banks that have the authority to make these types of equity investments. Under current practice, a U.S. banking organization may invest in up to 19.9 percent of a foreign firm's voting shares, and may also invest in additional non-voting equity in the company as long as the investment does not exceed a total of 40 percent of the company's total equity.[6]

In connection with these revisions to Regulation K, the Board reiterates that U.S. banking organizations may not exert control over nonfinancial companies in which they invest through the portfolio investment authority. Accordingly, a U.S. banking organization may not be involved in the operations of a company in which it makes a portfolio investment except to the extent necessary to protect its investment. This stipulation generally means that the U.S. banking organization would be able to appoint one—but not more than one—director to the board of directors of the company, if the organization has sufficient share ownership to elect one director. No officer, director, or employee of a U.S. banking organization would be permitted to be an employee or officer of the company in which the investment is made. Management agreements that give a right to participate in the day-to-day operations of a company are also contrary to the requirement that a portfolio investment must be passive.

Definition of "Equity"

Nine comments opposed the proposed definition of "equity" on the ground that it was overly broad. The term "equity" for purposes of the 40 percent limit on total equity ownership has been defined to include voting and nonvoting shares; quasi-equity instruments, such as warrants and other convertible instruments; and loans that give rights to participate in the profits of a company. This is a less stringent standard than proposed by the Board in that it excludes subordinated debt when determining the percentage of equity ownership. The Board continues to believe that ownership of warrants, other convertible instruments, and profit participation loans provide the holder with an equity interest in, and the potential to exercise influence over, a company and should therefore be included for purposes of the limits on equity holdings. The percentage of equity ownership in a company is to be determined on a fully diluted basis where there are unexercised rights to shares.[7]

Definition of "Investment"

The term "investment" for purposes of both the dollar limitations under the general consent provisions and the aggregate dollar limit on portfolio investments has been defined to include all instruments incorporated within the definition of "equity," and also to include subordinated debt when the investor or an affiliate also owns 5 percent or more of the company's shares as an investment or in a dealing account. The provision for subordinated debt represents a liberalization of both the proposal and the existing regulation in that both include subordinated debt if any shares are also owned by the investor or an affiliate. The *de minimis* 5 percent threshold is intended to permit a banking organization to hold a small investment or an inventory of a company's shares in a dealing account without being subject to the general consent dollar limitations when, for example, the banking organization makes a subordinated loan to the company.

Unlike the original proposal, senior loans would not be counted in the general consent dollar limitations. However, to address supervisory concerns about equity ownership affecting lending decisions, the regulation has been revised to require arms's-length lending decisions when the lender or an affiliate has an equity investment in the company. This requirement means, *inter alia*, that approvals of loans and equity investments are to be obtained by separate parts of a banking organization to ensure against conflicts of interest.

Aggregate Limitations on Portfolio Investments

The Board has adopted the proposal to lower the aggregate limit on portfolio investments in companies engaged in nonfinancial activities from 100 percent of capital and surplus to 25 percent of Tier 1 capital when the investor is a bank holding company. The limitations on aggregate holdings are designed to make certain that the overall capitalization of an investor is not impaired by market and other risks attendant to equity holdings in non-affiliated companies. The aggregate limit for portfolio investments by Edge corporations and foreign bank subsidiaries of member banks remains at 100 percent; however, consistent with the risk-based capital guidelines, the regulation has been revised to indicate that Tier 1 capital is the relevant standard rather than the current standard of capital and surplus.[8]

Six comments opposed the Board's proposal to decrease the aggregate portfolio investment authority for bank holding companies to 25 percent of Tier 1 capital. The comments were for the most part concerned with the inhibiting effect the proposal would have on their equity underwriting and dealing businesses. As noted above in the discussion on equity securities powers, equity shares of nonfinancial companies held in dealing and trading accounts and underwriting commitments for such shares are included in the aggregate limit on impermissible investments. The proposed 25 percent limitation for bank holding companies would not appear to constrain unduly the existing equity securities activities of such companies. In addition, as noted above, shares held in dealing accounts can be netted for purposes of determining compliance with this limit. The Board will, however, monitor future developments in this area to determine the continued appropriateness of the aggregate limitations.

Other Issues

One comment sought expanded authority to make portfolio investments in foreign companies that derive up to 10 percent of their consolidated assets and revenues from business in the United States. The Board has determined that such authority in the context of new investments in foreign companies would not be consistent with the requirement

[6] In determining the percentage of shares of a foreign company held by a U.S. banking organization, shares held under Regulation K or any other authority are aggregated. The definitions of "joint venture" and "subsidiary" in Regulation K have been clarified to this effect.

[7] A number of comments raised concerns about the possible effect of incorporating the proposed definition of "equity" into the term "equity securities" as used in the underwriting and dealing authority, although this incorporation was not specifically proposed by the Board. The comments stated that such an incorporation would subject the underwriting and dealing of many kinds of debt instruments to the limitations on equity securities activities in Regulation K, even though as a general matter they are not currently subject to those limitations. The proposed definition of "equity" was not intended to carry over to "equity securities" for purposes of underwriting and dealing authority. Accordingly, the provisions of the regulation addressing the limitations on underwriting and dealing in equity securities use the term "shares" instead of "equity securities" in order to confirm that, consistent with current practice, debt instruments with limited equity characteristics do not come within the limitations on equity securities activities in Regulation K.

[8] Regulation K has been revised to state that Tier 1 capital is the relevant standard for all capital measures other than those implementing statutory restrictions based on capital and surplus.

in the Edge Act that investments in foreign companies be limited to those engaged only in U.S. business that is incidental to foreign business. Moreover, U.S. banking organizations already have the authority under Regulation K to invest in up to 5 percent of the voting shares of foreign companies engaged in business in the United States.

General Consent Procedures

The Board proposed to increase the dollar limitation on investments under the general consent provisions of Regulation K from $15 million to $25 million. Thus, a bank holding company, member bank, or an Edge corporation engaged in banking would be permitted to invest the lesser of $25 million or 5 percent of its Tier 1 capital in activities and investments abroad permitted under Regulation K without providing the Board with prior notice of the investment.[9] Permissible activities are those activities specifically listed in Regulation K that the Board has found to be usual in connection with the transaction of banking or other financial operations abroad. Under the general consent authority, U.S. banking organizations may also make portfolio investments in companies that engage in "impermissible," usually nonfinancial, activities, and in joint ventures and subsidiaries engaged largely in permissible activities abroad.

Dollar Limitations

The Board received eleven comments on the proposed liberalization of the general consent authority. One comment specifically opposed the proposal on the grounds that any expansion of foreign powers threatens the deposit insurance fund. Ten comments supported the liberalization although most of them would prefer more liberal authority in the form of either a larger dollar amount or a limitation based only upon a percentage of the investor's capital. The comments generally argued that a percentage of the investor's capital was a more accurate reflection of the exposure of a banking organization to a particular investment than an absolute dollar limitation.

Meaningful Board review of foreign investments has been a primary justification for giving U.S. banking organizations the authority to make investments in a wide range of activities through subsidiaries of U.S. banks abroad. The Board's proposal sought to balance the need for continuing oversight — and to encourage more substantial internal review of such investments by banking organizations when a prior notice to the Board is required — against any inconvenience to the investors from Board review.

One of the factors that the Board considered in proposing this revision to the general consent limitations was that the existing limitations do not appear to be unduly burdensome. The general consent procedures — even with the $15 million limitation — accommodated approximately 60 percent of the dollar amount of foreign investments and 80 to 90 percent of the total number of foreign investments by a sample group of eight multinational bank holding companies in 1988.

The Board proposed to increase the dollar limitation from $15 million to $25 million to reflect the average growth of the dollar amount of the Tier 1 capital of multinational banks since the last five-year review of Regulation K, which was slightly less than one-third, with a projection for the same amount of growth over the next five years. The Board does not believe that the comments provide any additional insights that have not already been considered by the Board. Moreover, there seems to have been no diminution of risk to the banking system over the past five years that would warrant more substantial liberalization at this time. Accordingly, the Board has adopted the general consent provisions as proposed.

Two comments proposed that the Board include subordinated debt in the definition of "historical cost" in Regulation K, because in certain cases Regulation K defines subordinated debt to be an investment in capital for purposes of the investment provisions. The historical cost of an investment is one of the factors used to determine the dollar amount of permissible additional investments that can be made in an organization each calendar year under the general consent provisions. The Board is of the view that, although it is appropriate to view subordinated debt as an investment in a company for regulatory purposes in certain circumstances where it functions much like preferred shares, subordinated debt should not be viewed as part of the historical cost of an investment because debt is contractually required to be repaid.

Exceptions for Joint Ventures and Subsidiaries Acquired as Going Concerns

Regulation K currently permits U.S. banking organizations to invest in (1) a joint venture that derives up to 10 percent of its assets and revenues from impermissible activities, that is, activities not on Regulation K's list of permissible activities, and (2) a subsidiary acquired as a going concern that derives up to 5 percent of its assets and revenues from impermissible activities. Three comments proposed that these allowances for impermissible activities be increased by various amounts, from 20 to 25 percent for joint ventures and 10 to 15 percent for subsidiaries. The Board is of the view that the existing standards already provide sufficient leeway for foreign investments in joint ventures and subsidiaries acquired as going concerns, while limiting the risks associated with impermissible investments, and that increases in the level of permissible activities such as those proposed would not be appropriate at this time.

Definition of Subsidiary

The Board proposed to clarify Regulation K by specifying that any company of which an investor or its affiliate is a general partner will be considered a subsidiary of the investor. This policy is consistent with definitions in Regulation Y and with existing interpretations under Regulation K. The rationale for this policy is that general partners usually have full management powers and full liability for partnership debt and commitments. Thus, general partners can be deemed to control the partnership. The comments did not object to this proposal and the definition of subsidiary has been revised to reflect this clarification.

Other Issues

The regulation has also been amended to clarify that, in computing the amounts that may be invested in a company under the general consent procedures of Regulation K, an investor must also include amounts that have been invested in the same company by the investor or its affiliates under any authority other than Regulation K. For example, if an investor proposes to make an investment in a company under Regulation K, an investment in the company held by a bank holding company under section 4(c)(6) of the BHC Act (12 U.S.C. 1843(c)(6)) must also be included for purposes of determining compliance with the general consent procedures.

Debt-for-Equity Investments

The Board amended Regulation K in 1987 and 1988 to permit specifically investments to be made by banking organizations for their own accounts

[9] Edge corporations not engaged in banking would be able to invest the lesser of $25 million or 25 percent of Tier 1 capital, without giving the Board prior notice.

through debt-for-equity swaps in heavily indebted countries, subject to certain limitations. As an analogy to the authority for banks to acquire investments to prevent a loss on debts previously contracted ("DPC"), the Board permitted a banking organization to acquire as a debt-for-equity investment as much as 100 percent of the shares of a foreign nonfinancial company being privatized by a heavily indebted foreign government. The Board also permitted a banking organization to acquire up to 40 percent of the equity of a private sector company in a heavily indebted country through a debt-for-equity swap, subject to certain limitations. Generally, a debt-for-equity investment in a nonfinancial company must be made through a bank holding company rather than a bank. However, Regulation K currently provides that in special circumstances, as permitted by the Board on a case-by-case basis, such debt-for-equity investments may be made by banks or their subsidiaries. Furthermore, Regulation K permits debt-for-equity investments to be made under special general consent procedures that require no prior notice to the Board unless the size of the investment exceeds the greater of U.S. $15 million or one percent of the bank holding company's equity capital.

The Board proposed several technical modifications to the provisions of Regulation K governing debt-for-equity investments. First, the Board proposed to increase the general consent amount for debt-for-equity investments to the greater of $25 million or 1 percent of Tier 1 capital (from the greater of $15 million or 1 percent of equity capital). Second, the Board proposed to modify the reference to the procedures for exchanges of debt-for-equity to make clear that such procedures need not be pursuant to a formal government program as long as the procedures are otherwise permitted under applicable law or regulation. Along these lines, the Board proposed to adjust the divestiture requirement for debt-for-equity investments, which requires that investments be divested within two years after repatriation of the investment is permitted by the debtor country, with a maximum divesture period of fifteen years. To take account of the fact that there may not be any restrictions on repatriation, the Board proposed the alternative of requiring divestiture within ten years of an acquisition, subject to extensions of time approved by the Board for up to an additional five years.

The Board received eight public comments on the debt-for-equity investment proposal. The comments generally favored the technical modifications proposed by the Board, but recommended more substantive changes to the provisions of Regulation K governing debt-for-equity investments.

The Board has adopted the technical revisions discussed above. In connection with the divestiture requirement for debt-for-equity investments, the Board has also simplified the reporting requirements. In addition, in response to the requests for further revisions to the debt-for-equity procedures, the Board has adopted several substantive revisions to the regulation.

Cash Investment

The Board has revised the debt-for-equity investment provisions of Regulation K to allow U.S. banking organizations to make a relatively small new cash investment as part of a debt-for-equity investment in heavily indebted countries under the applicable general consent limit. Some heavily indebted countries that have sought to privatize government-owned companies in recent years have required that investors include a cash component in their bids to acquire such companies through debt-for-equity investments. The special provisions in Regulation K applicable to debt-for-equity investments do not generally permit additional cash investments without prior notice to, or approval from, the Board.

While this issue was not raised in written comments on the Board's proposal, discussions at various times between industry representatives and Board staff in connection with specific investments have indicated that U.S. banking organizations find the general consent provisions for debt-for-equity investments unduly limiting without the ability to include a cash component. Regulation K has been amended to permit a cash component for debt-for-equity investments under the special provisions of the regulation as long as the cash component does not exceed ten percent of the fair value of the debt being invested. As a condition of such investments, the Board expects that a reasonable judgment can be made that the likelihood of recovery from the investment would be greater than the potential risks of not collecting on the existing debt. In addition, if a larger cash component were required, the investor could request authority under other provisions of Regulation K.

Divestiture and Business in the United States

While the comments supported the Board's proposal to revise the divestiture requirement of Regulation K to take account of the fact that there is often no formal debt-for-equity program in eligible countries, five comments objected to the requirement that an investment in a foreign company be automatically divested if the company engages in business in the United States. The comments contended that the debt-for-equity investment itself is already subject to divestiture after a period of years and that foreign companies that engage in a limited U.S. business represent some of the best investment opportunities in heavily indebted countries. In response to these comments, the Board has eliminated the automatic divestiture requirement for debt-for-equity investments in companies that engage in a small level of business activities in the United States.

The Board has amended Regulation K to permit bank holding companies to retain, for the permitted holding period, debt-for-equity investments in companies that derive no more than 10 percent of their consolidated assets or revenues from activities conducted within the United States. To prevent any attempt to avoid the restrictions on the domestic activities of U.S. banking organizations, however, this authority excludes financial activities in the United States that otherwise require the Board's prior approval.

This revision will permit foreign companies in which U.S. banking organizations have invested through debt-for-equity swaps to engage in a greater amount of business in the United States than is currently permitted for other investments under Regulation K, where only U.S. activities otherwise incidental to the foreign business are permitted. The Board nevertheless believes that debt-for-equity investments can be distinguished from other types of investments with respect to their U.S. activities because, as noted by the comments, such investments are subject to a requirement of divestiture.[10] In addition, the Board has determined that in the context of U.S. banking organizations seeking to manage their exposure to heavily indebted countries

[10] There is some precedent for this type of distinction: when a foreign company in which a U.S. banking organization has invested subsequently commences activities in the United States, the U.S. banking organization is given a grace period before divestiture of the foreign company is required, albeit a much shorter period than the holding period permitted for debt-for-equity investments.

through investments in foreign companies with limited business in the United States, such U.S. business is incidental to foreign business as required by the Edge Act. Therefore, the Board has amended Regulation K to permit debt-for-equity investments in companies that derive no more than 10 percent of their consolidated assets or revenues from U.S. activities.

Dollar Limitations Under the Consent Procedures

As noted above, the Board has increased the maximum dollar amount limitations under the consent provisions for debt-for-equity investments from $15 million to $25 million. A number of comments suggested further increases in the maximum amount that could be invested under the special general consent provisions for debt-for-equity investments — from 1 to 2 percent of the Tier 1 capital of the investor. One comment also suggested a maximum general consent amount of 10 percent of the capital of the investor if the investor is an Edge corporation, while another suggested 3 percent. Two comments also urged that loans be excluded from the definition of "investment" for purposes of the provisions applicable to debt-for-equity investments.

In the Board's experience, few proposed debt-for-equity investments have exceeded the amount limitations of the general consent provisions for debt-for-equity investments and those that have were handled on an expedited basis, when requested by the banking organization. The Board has amended Regulation K, however, to provide additional leeway in the general consent procedures by excluding senior loans and extensions of credit from the definition of "investment" for purposes of the general consent procedures applicable to debt-for-equity investments.[11] Consistent with the definition of "investment" generally under Regulation K, which is discussed above, investments for purposes of the debt-for-equity provisions will continue to include subordinated debt and loans conferring rights to participate in profits of an organization when the banking organization also has an equity interest in the company. Thus, the same definition of "investment" will apply to both debt-for-equity investments and other investments under Regulation K.

[11] Bank holding companies making debt-for-equity in more than 25 percent of the voting shares of a private-sector company continue to be subject to the restriction in Regulation K that lending by the bank holding company and its affiliates to the foreign company may not exceed 50 percent of the total loans to the company.

Accordingly, the special definition of "investment" in the debt-for-equity provisions has been eliminated.[12]

Investment Vehicle

The proposed revisions to Regulation K discussed above will provide substantial additional authority for U.S. banking organizations to make debt-for-equity investments in heavily indebted countries; however, an issue addressed by several comments was the appropriate vehicle for such investments. Five comments recommended the elimination of the restriction requiring that debt-for-equity investments be held by or through the bank holding company unless the Board specifically approves an investment under the bank. One comment observed that requiring such investments to be held by the bank holding company or a subsidiary of a bank holding company may be inconsistent with the law of the country where the investment is taking place. Several of the comments stated that transferring debt from a bank to the bank holding company for purposes of making a debt-for-equity investment can raise tax and accounting issues. The comments advocated that the Board permit debt-for-equity investments to be made in nonfinancial companies through subsidiaries of the bank and not only subsidiaries of the bank holding company.

It should be noted that Regulation K currently permits debt-for-equity investments by Edge corporation and foreign bank subsidiaries of a bank under the portfolio investment provisions of Regulation K, including investments involving amounts in excess of the general consent limits, although the portfolio investment provisions limit ownership of voting shares to 19.9 percent. In response to the concerns expressed in the comments, however, the Board will give substantial consideration on a case-by-case basis to permitting debt-for-equity investments under the special provisions of Regulation K through Edge corporation and foreign bank subsidiaries of a bank. Regulation K has therefore been amended to provide more flexibility for the Board to approve such investments. In making such judgments on applications in this area, the Board will look closely at, among other factors, the existing and contingent risks posed to the bank by the proposed investment. After experience is gained with these types of investments, the Board will consider implementing appropriate general consent authority for debt-for-equity investments under the special provisions of Regulation K through an Edge corporation or foreign bank subsidiary of a bank.

[12] The definitions of "loans and extensions of credit" and "eligible country" have been moved from the special debt-for-equity investment provisions of Regulation K to the definitions applicable to the entire regulation.

40 Percent Limitation on Shares of Private Sector Companies

Bank holding companies are permitted to acquire up to 40 percent of the equity of a private sector company under the special debt-for-equity provisions of Regulation K, subject to certain restrictions. Six comments recommended the elimination of the 40 percent of equity limitation on the shares that can be held in private sector companies that are acquired through debt-for-equity investments. These comments noted that some of the best investment opportunities are in the private sector in heavily indebted countries and that it appears to be inconsistent to limit investments in these private sector companies while permitting the acquisition of 100 percent of the equity in public companies being privatized, when such companies may present greater investment risks. One of the comments also suggested that if the 40 percent limit is not increased, then the Board should clarify that investments made by two or more U.S. banking organizations in the same company would not be aggregated for purposes of the 40 percent of equity limitation.

The Board continues to believe that the 40 percent limitation serves a useful purpose, namely to permit U.S. banking organizations to have a significant stake in private sector companies, while assuring that there would be substantial participation by other investors in such companies. The limitation is intended to assure that a U.S. banking organization does not bear primary responsibility for the risks associated with running nonfinancial enterprises. Limiting a debt-for-equity swap participation in a private sector company to a substantial, but minority, position should help protect against the possibility that a U.S. banking organization would be so linked to its investment in the private sector company that it would make imprudent loans to an ailing enterprise or be held responsible for the liabilities incurred by such companies. Therefore, — and in keeping with the total equity limitation on portfolio investments — the Board has retained the 40 percent equity limit on debt-for-equity investments in nonfinancial private sector companies. Unless there are other indicia of control,

however, separate debt-for-equity investments by two or more U.S. banking organizations in the same private sector company will not be aggregated for purposes of calculating the 40 percent limitation.

Edge Corporations

Domestic Powers

The Edge Act limits the powers of lending and deposit-taking by Edge corporations in the United States to transactions that the Board has determined are incidental to the international or foreign business of the Edge corporation. Thus, an Edge corporation is generally required to verify that every deposit-taking or credit transaction it conducts is related to an international transaction. There are certain exceptions to this requirement. First, Edge corporations may take all types of deposits from foreign persons and governments. Second, Edge corporations are permitted to provide general banking services — including lending and deposit-taking — to so-called qualified business entities ("QBE"), companies that are listed in Regulation K that by charter or license are engaged in activities of an international character, without having to document the international character of each transaction. The Board requested comment on whether there are other entities for which Edge corporations could appropriately act as full service banks in the United States.

Most of the comments expressed the view that the U.S. activities of Edge corporations were too restrictive for Edge corporations to remain competitive and proposed numerous revisions, although one comment opposed any expansion of the domestic powers of Edge corporations other than adding to the list of QBEs, as currently defined. Comments proposed expansive liberalization of both QBE authority and the permissible U.S. activities of Edge corporations. Eight comments stated that the QBE list should be expanded to include foreign correspondent banks generally, or foreign organizations whose assets or revenues are predominantly foreign and predominantly derived from the business of banking, that is, foreign organizations that qualify as qualified foreign banking organizations.

Domestic Lending and Other Banking Services to Foreign Persons

In response to these comments, the Board has substantially liberalized the domestic powers of Edge corporations by revising the regulation to permit Edge corporations to offer full banking services, including credit services for U.S. purposes, to foreign persons.[13] The Board has previously determined that the foreign status of a person or company constitutes a sufficient "international" nexus to meet the requirement in the Edge Act that Edge corporations engage only in "international or foreign business." At present, Edge corporations may take deposits from, but generally cannot make loans to, foreign persons for domestic purposes. Thus, the revision to Regulation K with respect to credit extensions and other banking services parallels current authority for Edge corporations to accept domestic deposits from foreign governments and persons. Edge corporations also continue to be able to provide full banking services for U.S. entities that are QBEs under Regulation K.

This revision will enable Edge corporations to participate in the domestic activities of their foreign customers, as requested by a number of comments. It will, for example, enable Edge corporations to offer a full range of services to foreign correspondent banks and to foreign insurance and reinsurance companies, as requested by several comments. Nine comments requested authority to provide standby letters of credit to their customers, regardless of whether the specific transaction has an international origin. The Board's revision to Regulation K will enable an Edge corporation to provide a domestic standby letter of credit as long as the customer is a foreign person. Similarly, the revisions should satisfy the desire, reflected in four comments, for authority for Edge corporations to provide domestic as well as international wire transfers for foreign-based customers.

Overdrafts

The existing regulation permits Edge corporations to receive deposits from foreign governments and foreign persons. The Board proposed to add to this provision the limitation that overdrafts in a deposit account may not be frequent and should be restored within a short period of time because overdrafts are essentially extensions of credit that are not authorized by the regulation. One comment opposed this new limitation, indicating that overdraft financing had been a good source of revenue.

[13] This includes foreign governments and their agencies and instrumentalities; and offices or establishments located, and individuals residing, outside the United States.

The purpose of the proposed limitation was to limit extensions of credit in the form of overdrafts to foreign customers so that they would be consistent with the deposit-taking and credit authority of Edge corporations. In light of the Board's amendment that permits Edge corporations to make loans to foreign persons for any purpose, as discussed above, the Board has decided that this amendment is unnecessary.

Other Comments

Five comments advocated permitting Edge corporations to provide a full range of services for their parent banks. Such services would include funds transfers, check collection, and processing of letters of credit. These services are currently permissible where the transaction is related to international or foreign business. If the transaction is not related to international or foreign business, the Board takes the view that the Edge Act was not intended to permit an Edge corporation effectively to act as a branch of the parent bank.

Capitalization of Edge Corporations

The Board proposed changing the capitalization requirement for Edge corporations engaged in banking from 7 percent of risk assets to 10 percent of risk-weighted assets as computed under the risk-based capital standards, with at least half of that amount consisting of Tier 1 capital. The 10 percent standard is higher than the 8 percent ratio required by the Board for state member banks and bank holding companies. As with the 8 percent ratio, the proposed 10 percent standard is considered a minimum standard. In both cases, the Board continues to have supervisory discretion to impose higher standards as appropriate on the basis of the nature of the activities and the condition of the organization as a whole.

Most of the comments received on this proposal were strongly opposed to a ratio higher than 8 percent, which they deemed unfair and anticompetitive. They argued that the activities of Edge corporations were no more inherently risky than the activities of their parent banks and that the various risks inherent in the activities of Edge corporations were adequately taken into account in the new, risk-based capital standards. Three comments stated that the imposition of a 10 percent standard would greatly reduce their ability to issue letters of credit and participate in clearing activities.

Despite the objections of the comments, nearly all of the Edge corporations engaged in banking appear

to meet the 10 percent minimum standard and most are at substantially higher capital levels. The Board believes that the higher risk-based standard for Edge corporations is justifiable in light of the fact that Edge corporations are specialized U.S. deposit-taking entities that have unique risk characteristics, as compared to insured banks. Due to their specialized nature, Edge corporations currently have different capital standards than banks, and it should be noted that the proposed changes do not subject Edge corporations to the additional requirement of a leverage limit.

Accordingly, the Board has adopted a minimum 10 percent risk-based capital standard, with at least half that amount consisting of Tier 1 capital, effective December 31, 1992. However, because of restraints on investments in Edge corporations and their limited access to the markets, the Board will permit all of the Tier 2 capital of an Edge corporation to be comprised of subordinated debt. At present, Edge corporations may not count subordinated debt as capital. Until the new capital standards become effective, Edge corporations are required to abide by the current capital standards.

Emergency Meeting of Shareholders of an Edge Corporation

The Board proposed to amend Regulation K to require that the bylaws of an Edge corporation contain a provision giving the Federal Reserve Board the authority to call an emergency meeting of shareholders to address pressing problems of the Edge corporation. The Board has adopted this proposal. The regulation requires any shareholder or group of shareholders that own or control 25 or more percent of the shares, or a representative of such shareholder or group of shareholders, to attend the meeting or risk being barred from further direct or indirect participation in the management and affairs of the Edge corporation. This provision is designed to give the Board an alternative supervisory tool to a more time-consuming enforcement proceeding.

Two comments were received on this proposal. One comment opposed the proposal and another comment suggested that the regulation be revised to limit expressly the purpose for which the Board could call such a meeting to the discussion of serious problems of the Edge corporation. The Board has nonetheless adopted the requirement because it provides necessary authority to deal quickly and efficiently with serious developing problems in an Edge corporation.

Additions to the List of Permissible Activities Abroad

Swap Activities

The Board proposed to add acting as principal or agent in swap transactions relating to currency or interest rate obligations and their derivative products to Regulation K's list of permissible activities. The Board received ten comments on this proposal, all of which opposed the proposal. One comment opposed the proposal on the grounds that such swap transactions present risks that threaten the deposit insurance fund. Nine comments opposed the proposal on the theory that (1) the authority under Regulation K to engage in commercial and other banking activities already provides foreign subsidiaries with the authority to engage in swap transactions, and (2) the limitation in the proposal to currency and interest rate obligations and their derivative products suggests that other such products, such as commodity swaps, are not covered, and therefore the proposal narrows the existing authority.

In recognition of the fact that national and state banks are currently engaged in some commodity-linked transactions under permission granted by their chartering authorities, the Board has amended Regulation K to permit U.S. banking organizations to engage in swap activities abroad, including commodity swaps, to the same extent that state member banks are permitted to engage in such activities domestically. Therefore, such activities would be permitted unless the Board takes action to prohibit or limit state member banks from engaging in a particular swap activity domestically.[14] The Board intends to review the parameters for permissible swap activities for state member banks.

With respect to commodity-linked swap transactions there is, however, another issue. The Edge Act generally prohibits an Edge corporation from trading in commodities (12 U.S.C. 617). This requirement was generally intended to safeguard against Edge corporations attempting to control the prices of commodities. Thus, to the extent that U.S. banks are authorized to engage in commodity swap transactions and such transactions are not prohibited or limited for state member banks, the authority for Edge corporations to engage in such activities abroad is limited to contracts with an option for cash settlement. This requirement is intended to prevent foreign subsidiaries of Edge corporations from taking delivery of commodities in settlement of swap contracts, thereby trading in the commodities themselves in violation of the statutory prohibition.

Life Insurance Underwriting

The Board proposed to add the underwriting of life insurance and other actuarially predictable risks to the list of permissible overseas activities, subject to the requirements that (1) the activity be conducted through a bank holding company subsidiary, and (2) capital investments in, and unsecured extensions of credit to, an insurance underwriting subsidiary be deducted from the regulatory capital of the bank holding company.

Ten comments supported the Board's proposal to add life insurance underwriting to the list. Six of the comments objected, however, to the requirement that the activity be conducted through a subsidiary of a bank holding company and not a subsidiary of a bank. Six comments also opposed the requirement of a capital deduction. Several of the comments maintained that such requirements should not be necessary given the Board's determination that underwriting actuarially predictable risks does not present undue risks to U.S. banking organizations.

The Board has added the underwriting of life insurance, insurance written in connection with pension funds and annuities, and the underwriting of other actuarially predictable risks to the list of permissible activities abroad under Regulation K, subject to the above-stated requirements. Unlike securities activities, insurance underwriting has not traditionally been conducted by banks through their Edge corporation and foreign bank subsidiaries. As a result, the Board believes it is appropriate to require life insurance underwriting abroad to be conducted generally through a subsidiary of a bank holding company and not a bank. Moreover, a deduction from regulatory capital is appropriate because, although banking and insurance may be complementary activities and may even at times offer functionally equivalent products, some of the risks are sufficiently different from banking that the most appropriate method for evaluating capital adequacy is on an unconsolidated basis. Such an approach is consistent with the Basle agreement.

[14] Swap transactions involving equity derivative products are separately authorized under Regulation K as incidental to equity securities powers.

The addition of annuity and pension fund-related insurance underwriting responds to the request of one comment for clarification as to the types of activities contemplated by the provision with respect to "other actuarially predictable risks." These types of activities have previously been approved by the Board on a case-by-case basis.[15]

FCM Activities

The Board proposed to add futures commission merchant ("FCM") activities on exchanges that the Board has previously approved to the list of permissible activities in Regulation K, subject to the requirement that any activities by foreign subsidiaries of U.S. banks on mutual exchanges or any activities involving nonfinancial instruments or their derivative products continue to require the Board's prior approval.

Three comments opposed the Board's proposal. Two comments objected on the basis that FCM activities are risky and threaten the deposit insurance fund. One comment generally objected to the proposal because it would require FCMs that are operating subsidiaries of national banks to obtain the approval of both the Board and the Comptroller of the Currency ("Comptroller") before becoming members of mutual exchanges abroad.

Seven comments generally supported the Board's proposal. Five of those comments recommended, however, that the Board also permit the brokerage of nonfinancial instruments without prior Board approval because, the comments maintained, the brokerage function and risk are no different for financial and nonfinancial futures. Three comments noted that the Comptroller permits the brokerage of nonfinancial futures.

The Board is of the view that the addition of FCM activities with respect to financial instruments is an appropriate addition to the list of permissible activities, particularly given that such activities are permissible domestically under Regulation Y. The Board, however, does not believe it is appropriate to add the brokerage of nonfinancial instruments to Regulation K's list of permissible activities at this time because such "nonfinancial" activities present additional risks for banking organizations in nontraditional areas where they have little experience and expertise. Accordingly, as proposed, the Board has added FCM activities on exchanges that the Board has previously approved to the list of permissible activities in Regulation K.[16] The Board has nevertheless limited such authority to financial instruments of the type it has previously approved under Regulation K. Basically, these include instruments with respect to which FCM activities have been authorized domestically under Regulation Y (12 CFR 225.25(b)(18)) and the foreign equivalents of such instruments, including futures and options on stock indices, bond indices, other interest rate contracts, and foreign exchange contracts. The Board would expect U.S. banking organizations to consult with Board staff when there is a question as to whether a product is a financial instrument of the type previously approved by the Board.

The Board also proposed to require prior approval for foreign subsidiaries of U.S. banks to engage in FCM activities on any mutual exchange. Two comments noted that this requirement would encompass mutual exchanges that the Board had previously approved and proposed that the Board require prior approval for bank subsidiaries to become members of mutual exchanges only when the Board has not previously approved the particular mutual exchange. One comment recommended that the prior approval requirement for mutual exchanges be eliminated when the exchange acknowledges that the parent bank is not liable for its subsidiary's obligations to the exchange.

Upon further review, because of the risks associated with mutual exchanges, the Board will require prior approval for foreign subsidiaries to engage in FCM activities on a mutual exchange, regardless of whether the parent of the foreign subsidiary is a bank holding company. In response to the comments regarding mutual exchanges that the Board has previously approved, however, the Board has delegated to Reserve Banks the authority to approve applications to become members of mutual exchanges, provided that the mutual exchange has previously been approved by the Board and membership is on the same basis, and subject to the same terms and conditions, as that which the Board has previously approved. This requirement generally means that a Reserve Bank has the authority to approve such applications if the applicant has made the same commitments as the commitments on which the Board relied in previously authorizing membership on that mutual exchange. Approval for any new exchange, including any new mutual exchange, would continue to be granted by the Board.

Other Activities

Two comments recommend that the Board add Islamic banking products, such as purchase and repurchase arrangements involving goods and real property, which the comments maintained are the functional equivalent of extensions of credit, to the list of permissible activities. The Board recognizes that such activities may be usual in connection with the transaction of banking or other financial operations in certain foreign jurisdictions, and in that situation a banking organization may seek the Board's prior approval to engage in the activities in that jurisdiction. In the Board's view, however, such activities are not so prevalent or necessarily generically the same so as to warrant addition to the list of permissible activities in all foreign jurisdictions.

Another comment proposed that the current leasing authority in Regulation K, which is limited to leasing that is the functional equivalent of credit, be broadened to reflect recent changes domestically in leasing powers for banks and bank holding companies. For example, the Board has proposed to amend the list of permissible activities for bank holding companies in Regulation Y to include leasing transactions that rely upon an estimated residual value of up to 100 percent of the acquisition cost of the property leased (*See* 55 FR 22348 and 23446). Because the list of permissible activities in Regulation K incorporates activities permissible under Regulation Y, such leasing activities would be permissible under Regulation K if any revisions are made to Regulation Y. Accordingly, the

[15] Specifically, the Board has approved: (1) underwriting life insurance in the United Kingdom, Federal Republic of Germany, and Australia; (2) underwriting credit insurance not directly related to extensions of credit by affiliates, savings completion insurance, and home loan life insurance and endowment life insurance related to mortgage lending activities of affiliates, in Belgium and Luxembourg; (3) underwriting pension fund-related insurance and disability insurance in connection with Chilean mandated worker pensions; (4) underwriting retirement-related life insurance in Argentina; and (5) underwriting permanent health insurance in the United Kingdom.

[16] The Board, under Regulation K, has approved FCM activities for certain banking organizations on the London Gold Futures Market; the London International Financial Futures Exchange; the Singapore International Monetary Exchange; the Sydney Futures Exchange; the Tokyo Stock Exchange; the Marche a Terme d'Instruments Financiers, Paris; the Hong Kong Futures Exchange; the Bolsa Mercantile & de Futuros Exchange, Sao Paulo; the Bolsa de Mercadorias de Sao Paulo; the Bolsa Brasileira de Futuros, Rio de Janeiro; the Amsterdam Financial Futures Market; the Tokyo International Financial Futures Exchange; the DTB Deutsche Terminborse; the New Zealand Futures and Options Exchange Limited, Auckland; and the Osaka Securities Exchange.

Board does not believe it is necessary to expand the leasing authority in Regulation K at this time.

Finally, one comment requested that the Board add real estate brokerage and management, and pension fund administration to the list of permissible activities. The Board has approved these activities in a limited number of instances on a case-by-case basis. The Board continues to believe that such activities are best addressed in connection with a case-by-case review of the nature of each of the activities and the usualness of each activity in the proposed foreign jurisdiction, rather than by adding such activities to the list of permissible activities in Regulation K. More specifically, absent the Board's specific approval, U.S. banking organizations should not engage in real estate development through any combination of authorities for permissible activities.

Qualifying Foreign Banking Organizations

Regulation K implements statutory exemptions from the BHC Act for certain activities of foreign banks. These exemptions are granted to qualifying foreign banking organizations ("QFBOs"). In order to be deemed a QFBO, the foreign banking organization generally must derive more than half of its non-U.S. business from banking and more than half of its banking business from outside the United States. Banking business is defined to include any activity listed as permissible in Regulation K, if such activities are conducted in the bank ownership chain, that is, by the foreign bank or a subsidiary of the foreign bank.

The Board requested comments on several issues under Regulation K to address the increasing number of foreign affiliations between banks and other financial services companies, including insurance companies. In particular, the Board was concerned about foreign acquisitions that could prevent a previously qualifying foreign bank from satisfying the QFBO standard and the related extraterritorial effects of the Board's regulation. The proposals were to:

1. Add underwriting life and related insurance to the list of activities that are permissible for a U.S. banking organization abroad so that insurance activities conducted in the bank ownership chain would contribute toward a banking organization's qualification under the QFBO test.

2. Exercise the Board's discretion on a case-by-case basis to grant specific determinations of eligibility under the QFBO standard to prevent hardships to foreign financial services companies that are engaged largely in activities permissible to U.S. bank holding companies abroad.

3. Amend Regulation K to state that specific determinations of eligibility would generally not be granted to a foreign industrial or commercial company that owns a foreign bank or to a company that derives less of its commercial banking business from outside the United States than it derives from inside the United States. In this context a commercial banking business means a banking business conducted through a regulated foreign commercial bank.

4. Modify Regulation K to permit a previously qualifying organization that falls out of compliance with the QFBO standard to continue to conduct activities and make acquisitions abroad without prior Board review until such time as the Board acts on a request for exemption from the QFBO standard.

The Board received twelve public comments on these issues. Most of the comments supported the Board's proposal, but some comments stated that the Board did not go far enough to avoid undue extraterritorial application of U.S. law to the activities of foreign banking organizations. Many of the comments provided extensive, detailed suggestions for liberalizing the QFBO standard, expanding the permissible activities of QFBOs, and clarifying means of compliance with the QFBO exemptions.

Definition of Banking under the QFBO Test

The comments supported the Board's decision to expand the kinds of activities that U.S. banks may conduct abroad to include life insurance, recognizing that this proposed change will help international banks that acquire insurance companies to meet the QFBO standard. A number of comments, however, proposed further expansion of the definition of "banking assets" for purposes of determining compliance with the QFBO standard. The proposals varied widely, including a proposal that the Board consider any activity permitted by the home regulator as "banking" and several proposals that the Board eliminate the requirement that banking activities be conducted in the bank ownership chain for purposes of determining compliance with the QFBO standard. These comments argued that the current rules do not accommodate a bank holding company structure because the activities conducted by the subsidiaries held outside of the bank ownership chain do not count towards qualifying status.

These issues were considered in connection with the proposed revisions to Regulation K. The Board determined that, because of the many unknown varieties of corporate combinations that may exist outside the United States, it is preferable at this time to retain the existing standard and to permit case-by-case exemptions rather than to create a new standard. In addition, a new standard could be considered after more experience is gained with respect to the ongoing consolidations in Europe and elsewhere. A number of comments expressly noted their support for the case-by-case exemptive procedure proposed by the Board to grant interim authority to non-qualifying foreign banking organizations to continue their activities outside the United States while their request for exemption is under consideration. Accordingly, the Board has adopted the four proposals listed above. It should be noted, however, that the temporary authority to engage in activities abroad prior to the Board's determination of an exemption from the QFBO standard would be provided only to foreign organizations that previously satisfied the QFBO standard and to affiliates of such organizations, but not to organizations that have never satisfied, and are not affiliated with organizations that previously satisfied, the QFBO test.

A number of comments also suggested that the Board provide certain grandfather rights to QFBOs, including QFBOs that have fallen out of compliance. One comment suggested grandfather rights for a QFBO that falls out of compliance because the growth of its U.S. banking operations exceeds that of its worldwide banking business. Two comments suggested that the Board grandfather U.S. insurance and banking operations that pre-date an affiliation outside the United States.

The Board has not adopted any provisions that provide grandfather rights for QFBOs. The first suggestion is in part dealt with by the Board's decision to treat certain foreign insurance activities conducted in the bank ownership chain, or otherwise permitted by the Board on an exemptive basis, as foreign "banking" activities. Where such grandfather rights would permit a foreign organization to develop substantial U.S. banking operations without the support of a foreign bank parent of nearly equivalent size, broader issues of supervisory and regulatory policy are raised. The second suggestion, if permitted on a permanent basis, would give foreign banks a significant competitive advantage over U.S. banking organizations.

Exemptions for Nonbanking Activities of QFBOs

QFBOs are granted authority in two respects under Regulation K to engage in certain nonfinancial activities within the United States that are impermissible for domestic bank holding companies. First, Regulation K implements section 2(h)(2) of the BHC Act (12 U.S.C. 1841(h)(2)) by authorizing a QFBO to control a foreign company that is engaged directly or indirectly in nonfinancial activities in the United States, provided that (1) more than 50 percent of the foreign company's assets and revenues derive from outside the United States, and (2) the U.S. activities of the foreign company are in the same line of business as its foreign activities. Second, Regulation K implements section 4(c)(9) of the BHC Act (12 U.S.C. 1843(c)(9)) by permitting a QFBO to engage directly in the United States in activities incidental to its activities outside the United States and to own or control the voting shares of a company engaged in U.S. activities that are incidental to the international or foreign business of such company.

Comments proposed introducing into Regulation K a basket exemption for small foreign venture capital investments, without regard to the U.S. activities of such companies. Section 2(h)(2) of the BHC Act authorizes foreign banking organizations to invest in foreign companies that are "principally engaged in business outside the United States." Under the proposed basket exemption there would be no way to ensure compliance with the statutory requirement, and such an exemption would provide a foreign banking organization with business opportunities unavailable to U.S. banking organizations.

One comment suggested that the Board should establish a "safe harbor" presumption of non-control for investments in a foreign company by a QFBO. The comment further suggested that the standard for control in Regulation K should not be as stringent as that in Regulation Y because of the extraterritorial consequences. The Board has not adopted these suggestions because they would allow foreign banking organizations to make significant equity investments in foreign companies conducting business in the United States that would be impermissible for U.S. bank holding companies.

A comment also asked that the Board make it clear that the Board will not apply its policy guidelines limiting nonvoting equity investments by bank holding companies (*See* 12 CFR 225.143) to foreign venture capital investments that may engage in impermissible activities in the United States. For purposes of foreign banking organizations, Regulation K assumes control to exist at any level of share ownership in excess of 24.9 percent of voting shares. Whether ownership of voting shares below that level could constitute control is a question of fact and depends upon whether there are other indicia of control.

Compliance Issues Related to QFBOs

The proposal and comments also raised a number of issues concerning the method of determining compliance with certain exemptions from the BHC Act available to QFBOs. As noted above, in implementing the exemption in section 2(h)(2) of the BHC Act for investments in foreign companies with U.S. business, Regulation K requires that (1) 50 percent of the foreign company's consolidated assets and revenues derive from outside the United States, and (2) the U.S. activities of the foreign company be in the same line of business as the activities of the foreign company abroad. In computing the amount of business of a foreign company that is conducted outside the United States, assets and revenues are considered to be derived from outside the United States unless the assets are located in, or revenues generated by, the U.S. offices of the foreign company. Thus, the test is based on the location of the offices conducting the business and not the residency of the customers of the foreign company.

50 Percent Requirement

The requirement that 50 percent of the foreign company's consolidated assets and revenues derive from outside the United States is designed to implement the statutory requirement that the foreign company be "principally engaged in business outside of the United States." One comment stated that the Board has not made clear the dates or periods of time that are to be used in determining compliance with the consolidated assets and revenues tests. Although the Board does not believe that this has been an area of confusion, it should be noted that financial information as of the previous fiscal year should be used unless there is more recent information readily available.

The comment also suggested that Regulation K could be amended to clarify that where a foreign bank does not actually control a company, the foreign bank should be entitled to rely on information that is "reasonably available" to it for purposes of the Board's regulation. The regulation currently includes a provision permitting reliance on reasonably available information; however, to remedy possible confusion as to the types of reports to which the provision is applicable, the Board has made certain technical amendments to the regulation to the effect that this provision applies to all reports on minority investments by foreign banks required under Regulation K.

This comment also proposed grandfathering investments that satisfy the 50 percent test at the time of investment but, because of changes beyond the control of the investor, subsequently cease to satisfy the 50 percent test. The Board has rejected this suggestion because it is inconsistent with the statutory requirement that foreign companies be "principally engaged in business outside the United States."

Noting the hardship imposed by a divestiture requirement for nonqualifying investments, the comment also proposed that if a company falls out of compliance with the assets or revenues test, the foreign bank should generally be given two years from that date to sell the investment. The Board has revised Regulation K to provide that if the investment fails to satisfy the 50 percent test for two consecutive years, the QFBO may either divest the investment within one year or seek the Board's specific approval to retain the investment for a longer period.

Same Line of Business Requirement

Regulation K looks to the Standard Industrial Classification (the "SIC") to determine whether activities are in the same line of business for purposes of the section 2(h)(2) exemption. The SIC was modified in 1987. The Board proposed to revise the references to the SIC in Regulation K to reflect the new SIC categories. No public comments were received on the issue. Thus, the Board has revised the references to the SIC in Regulation K as proposed.

Lending by Foreign Bank Subsidiaries of U.S. Banking Organizations to U.S. Residents

Although the Board did not solicit comments on this topic, three comments recommended that the Board rescind its policy which prohibits foreign bank subsidiaries of U.S. banking organizations from making loans to U.S. residents except for international purposes.[17] The comments contended

[17] Letter, dated November 13, 1970, from Kenneth A. Kenyon to American International Bank ("AIB"). Continued

that U.S. banking organizations are competitively disadvantaged by this requirement because foreign banks are permitted to make loans to U.S. residents.

The Board's decision to impose this restriction in 1970 was based in large part upon concern that permitting foreign subsidiaries of U.S. banking organizations to make loans to U.S. residents would permit avoidance of reserve requirements, as loans by foreign subsidiaries to U.S. residents would not be subject to the reserve requirements that would apply to such loans if made by the parent bank or its foreign branches. In light of the Board's recent decision to reduce to a rate of zero the reserve requirements on nonpersonal time and net Eurocurrency transactions, the incentive for banks to encourage foreign subsidiaries to make domestic loans in order to avoid reserve requirements no longer exists. Accordingly, the Board has suspended the prohibition against lending by foreign bank subsidiaries of U.S. banking organizations to U.S. residents for domestic purposes, as long as reserve requirements on nonpersonal time and Eurocurrency transactions are set at zero.

Powers of Foreign Branches of Member Banks

Investing, Underwriting, and Dealing in Government Obligations

Foreign branches of member banks are permitted to (1) invest in the securities of "governmental entities" of the country in which the foreign branch is located, and (2) to underwrite, distribute, buy, and sell obligations of "an agency or instrumentality of the national government of the country in which the branch is located." The former authority is limited to 1 percent of the total deposits of the bank's branches in that country and the latter authority is limited to 10 percent of the bank's capital and surplus. The Board proposed to limit both authorities to obligations or securities that are supported by the taxing authority or the full faith and credit of the national government.

Four comments opposed the proposed limitation to "full faith and credit" obligations of the national government as too restrictive. The Board proposed this amendment because the question of what constitutes the security of a governmental entity or the obligation of an instrumentality of a national government has been raised in connection with several proposed foreign investments. The Board has adopted its proposal to define obligations of an agency or instrumentality as those supported by the taxing authority or full faith and credit of the national government to provide clarity as to what is intended by the regulation. The Board has, however, defined the authority to invest in securities of governmental entities to include securities of governmental entities not supported by the taxing authority or full faith and credit of the national government. The Board has clarified that the authority to underwrite, distribute, buy, and sell obligations, includes the authority to hold such obligations; thus the authority to invest in securities of governmental entities under this provision is authority in addition to the authority for investments in obligations of an agency or instrumentality.

Several comments requested that the Board increase the additional authority to invest in securities of governmental entities from 1 percent to 5 or 10 percent of the deposits of a bank's branches in that country. Because this authority includes securities that are not supported by the full faith and credit of the national government, the Board has not expanded the authority. However, the Board has revised the authority to underwrite, distribute, buy, sell, and hold governmental obligations supported by the full faith and credit of the national government from 10 percent of a member bank's capital and surplus to the greater of 10 percent of a member bank's Tier 1 capital or 10 percent of the deposits of a bank's branches in that country.

Six comments requested that the Board remove the limitations in the authority to invest in, and underwrite and deal in, obligations of a foreign government that restricts such authority to the country in which the branch is located. The comments noted the globalization of financial markets and stated that eliminating the restriction would give branches additional flexibility in managing their assets and would give banks greater flexibility in organizing their government securities activities. The Board has rejected this suggestion because it would permit banking organizations to build global government securities operations in a branch of the bank rather than through a separate subsidiary, which is contrary to the Board's policy of protecting insured banks from the direct risk of securities activities.

Finally, the term "political subdivision" has been substituted for the current language of "municipality or other local or regional governmental entity." This term is generally intended to mean municipalities or local or regional governments with independent taxing authority.

Operating Subsidiaries

Regulation K currently permits foreign branches, with the Board's specific approval, to establish wholly-owned subsidiaries where required by local law. The Board's proposal removed the condition that such subsidiaries be required by local law. A number of comments supported this proposal and some requested even broader authority to establish operating subsidiaries, including elimination of the requirement that such subsidiaries be wholly-owned by the branch. The Board has adopted its proposal, thereby removing the restriction that such subsidiaries be required by local law. This revision will given U.S. banking organizations greater flexibility in their foreign operations by permitting them, with the approval of the Board, to establish operating subsidiaries in countries where a bank operates a branch whenever permitted — rather than required — by local law. In addition, in response to the comments that in some foreign jurisdictions 100 percent ownership of an operating subsidiary by a branch may not be legally permissible, the Board has revised the authority to permit less than 100 percent ownership where local law or regulation requires local investors to hold directors' qualifying shares or equivalent types of share interests. Any investments by a branch in an operating subsidiary, however, are subject to the Board's prior approval and the Board would not generally expect investments by another investor to be substantial.

Export Trading Companies

The Board proposed to amend formally its provisions governing export trading companies to conform with certain standards mandated by Congress in the Omnibus Trade and Competitiveness Act of 1988 (P. L. 100-418). The Board has previously implemented the statutory requirements administratively. The Board proposed to (1) neutralize the effect of third party transactions for purposes of determining whether a company is a permissible bank-affiliated export trading company; (2) provide companies with a longer period to satisfy the revenues test for purposes of determining their status as a permissible export trading company; and (3) eliminate certain Board

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regarding AIB's investment in Henry Ansbacher & Co., Limited, London, England (the "Ansbacher letter").

Delegation Rules regarding leverage ratios and dollar amounts of inventory for bank-affiliated export trading companies.

The Board received two comments on this proposal. One banking organization stated that the amendments would be useful. In addition, the United States Department of Commerce ("Commerce"), which has a role in implementing other aspects of the Bank Export Services Act, the statute that authorizes bank-affiliated export trading companies, generally supported the proposed revisions. Commerce suggested, however, an amendment to the Board's proposal that would have the effect of permitting revenues derived from third country trade to be considered as derived from the export of a service produced in the United States. Under this approach, such revenues could be counted as derived from exports for purposes of satisfying requirements for export trading company status. This issue was raised at the time the statute mandating these amendments was adopted and the proposal was rejected by the Congress. Accordingly, the Board has adopted the revisions with regard to export trading companies as proposed without making the revision requested by Commerce.

Other Technical Revisions

Other technical revisions that are not substantive in nature have been made to Regulation K to clarify existing provisions.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), the Board of Governors of the Federal Reserve System certifies that this final rule will not have a significant economic impact on a substantial number of small entities that are subject to the regulation.

List of Subjects

12 CFR Part 211

Accounting for fees on international loans, Allocated transfer risk reserve, Banking, Banks, Export trading companies, Exports, Federal Reserve System, Foreign banking, Holding companies, Investment made through debt-for-equity conversions, Investments, Reporting and recordkeeping requirements, Reporting and disclosure of international assets.

12 CFR Part 265

Authority delegations (Government agencies), Federal Reserve System.

For the reasons set forth above, the Board has amended 12 CFR part 211, subparts A, B, and C, and part 265 as follows:

PART 211—INTERNATIONAL BANKING OPERATIONS

1. The authority citation for part 211 is revised to read as follows:

Authority: Federal Reserve Act (12 U.S.C. 221 *et seq.*); Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*); the International Banking Act of 1978 (Pub. L. 95-369; 92 Stat. 607; 12 U.S.C. 3101 *et seq.*); the Bank Export Services Act (Title II, Pub. L. 97-290, 96 Stat. 1235); the International Lending Supervision Act (Title IX, Pub. L. 98-181, 97 Stat. 1153, 12 U.S.C. 3901 *et seq.*); and the Export Trading Company Act Amendments of 1988 (Title III, Pub. L. 100-418, 102 Stat. 1384 (1988)).

2. Subpart A (§ § 211.1 through 211.7) is revised to read as follows:

Subpart A—International Operations of United States Banking Organizations

Sec.

Subpart A—International Operations of United States Banking Organizations

§ 211.1 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Board of Governors of the Federal Reserve System ("Board") under the authority of the Federal Reserve Act ("FRA") (12 U.S.C. 221 *et seq.*); the Bank Holding Company Act of 1956 ("BHC Act") (12 U.S.C. 1841 *et seq.*); and the International Banking Act of 1978 ("IBA") (12 U.S.C. 3101 *et seq.*). Requirements for the collection of information contained in this regulation have been approved by the Office of Management and Budget under the provision of 44 U.S.C. 3501, *et seq.* and have been assigned OMB Nos. 7100-0107; 7100-0109; 7100-0110; 7100-0069; 7100-0086; and 7100-0073.

(b) *Purpose.* This subpart sets out rules governing the international and foreign activities of U.S. banking organizations, including procedures for establishing foreign branches and Edge corporations to engage in international banking and for investments in foreign organizations.

(c) *Scope.* This subpart applies to:

(1) Corporations organized under section 25(a) of the FRA (12 U.S.C. 611-631), "Edge corporations";

(2) Corporations having an agreement or undertaking with the Board under section 25 of the FRA (12 U.S.C. 601-604a), "Agreement corporations";

(3) Member banks with respect to their foreign branches and investments in foreign banks under section 25 of the FRA (12 U.S.C. 601-604a);[1] and

(4) Bank holding companies with respect to the exemption from the nonbanking prohibitions of the BHC Act afforded by section 4(c)(13) of the BHC Act (12 U.S.C. 1843(c)(13)).

§ 211.2 Definitions.

Unless otherwise specified, for the purposes of this subpart:

(a) An *affiliate* of an organization means:

(1) Any entity of which the organization is a direct or indirect subsidiary; or

(2) Any direct or indirect subsidiary of the organization or such entity.

(b) *Capital Adequacy Guidelines* means the Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure (12 CFR part 208, app. A).

(c) *Capital and surplus* means paid-in and unimpaired capital and surplus, and includes undivided profits but does not include the proceeds of capital notes or debentures.

(d) *Directly or indirectly,* when used in reference to activities or investments of an organization, means activities or investments of the organization or of any subsidiary of the organization.

(e) *Eligible country* means a country that, since 1980, has restructured its sovereign debt held by foreign creditors, and any other country that the Board deems to be eligible.

(f) An Edge corporation is *engaged in banking* if it is ordinarily engaged in the business of accepting deposits in the United States from nonaffiliated persons.

(g) *Engaged in business* or *engaged in activities* in the United States means maintaining and operating an office (other than a representative office) or subsidiary in the United States.

(h) *Equity* means an ownership interest in an organization, whether through:

(1) Voting or nonvoting shares;

(2) General or limited partnership interests;

(3) Any other form of interest conferring ownership rights, including warrants, debt, or any other interests

[1] Section 25 of the FRA, which refers to national banking associations, also applies to state member banks of the Federal Reserve System by virtue of section 9 of the FRA (12 U.S.C. 321).

that are convertible into shares or other ownership rights in the organization; or

(4) Loans that provide rights to participate in the profits of an organization, unless the investor receives a determination that such loans should not be considered equity in the circumstances of the particular investment.

(i) *Foreign* or *foreign country* refers to one or more foreign nations, and includes the overseas territories, dependencies, and insular possessions of those nations and of the United States, and the Commonwealth of Puerto Rico.

(j) *Foreign bank* means an organization that:

(1) Is organized under the laws of a foreign country;

(2) Engages in the business of banking;

(3) Is recognized as a bank by the bank supervisory or monetary authority of the country of its organization or principal banking operations;

(4) Receives deposits to a substantial extent in the regular course of its business; and

(5) Has the power to accept demand deposits.

(k) *Foreign branch* means an office of an organization (other than a representative office) that is located outside the country under the laws of which the organization is established, at which a banking or financing business is conducted.

(l) *Foreign person* means an office or establishment located, or individual residing, outside the United States.

(m) *Investment* means:

(1) The ownership or control of equity;

(2) Binding commitments to acquire equity;

(3) Contributions to the capital and surplus of an organization; and

(4) The holding of an organization's subordinated debt when the investor and the investor's affiliates hold more than 5 percent of the equity of the organization.

(n) *Investor* means an Edge corporation, Agreement corporation, bank holding company, or member bank.

(o) *Joint venture* means an organization that has 20 percent or more of its voting shares held directly or indirectly by the investor or by an affiliate of the investor under any authority, but which is not a subsidiary of the investor.

(p) *Loans and extensions of credit* means all direct and indirect advances of funds to a person made on the basis of any obligation of that person to repay funds.

(q) *Organization* means a corporation, government, partnership, association, or any other entity.

(r) *Person* means an individual or an organization.

(s) *Portfolio investment* means an investment in an organization other than a subsidiary or joint venture.

(t) *Representative office* means an office that:

(1) Engages solely in representational and administrative functions such as solicitation of new business for or liaison between the organization's head office and customers in the United States; and

(2) Does not have authority to make business decisions for the account of the organization represented.

(u) *Subsidiary* means an organization more than 50 percent of the voting shares of which is held directly or indirectly, or which is otherwise controlled or capable of being controlled, by the investor or an affiliate of the investor under any authority. Among other circumstances, an investor is considered to control an organization if the investor or an affiliate is a general partner of the organization or if the investor and its affiliates directly or indirectly own or control more than 50 percent of the equity of the organization.

(v) *Tier 1 capital* has the same meaning as provided under the Capital Adequacy Guidelines (12 CFR part 208, appendix A).

§ 211.3 Foreign branches of U.S. banking organizations.

(a) *Establishment of foreign branches.*

(1) *Right to establish branches.* Foreign branches may be established by any member bank having capital and surplus of $1,000,000 or more, an Edge corporation, an Agreement corporation, or a subsidiary held pursuant to this subpart. Unless otherwise provided in this section, the establishment of a foreign branch requires the specific prior approval of the Board.

(2) *Branching within a foreign country.* Unless the organization has been notified otherwise, no prior Board approval is required for an organization to establish additional branches in any foreign country where it operates one or more branches.[2]

(3) *Branching into additional foreign countries.* After giving the Board 45 days' prior written notice, an organization that operates branches in two or more foreign countries may establish a branch in an additional foreign country, unless notified otherwise by the Board.[2]

(4) *Expiration of branching authority.* Authority to establish branches through prior approval or prior notice shall expire one year from the earliest date on which the authority could have been exercised, unless the Board extends the period.

(5) *Reporting.* Any organization that opens, closes, or relocates a branch shall report such change in a manner prescribed by the Board.

(b) *Further powers of foreign branches of member banks.* In addition to its general banking powers, and to the extent consistent with its charter, a foreign branch of a member bank may engage in the following activities so far as usual in connection with the business of banking in the country where it transacts business:

(1) *Guarantees.* Guarantee debts, or otherwise agree to make payments on the occurrence of readily ascertainable events,[3] if the guarantee or agreement specifies a maximum monetary liability; but except to the extent that the member bank is fully secured, it may not have liabilities outstanding for any person on account of such guarantees or agreements which, when aggregated with other unsecured obligations of the same person, exceed the limit contained in paragraph (a)(1) of section 5200 of the Revised Statutes (12 U.S.C. 84) for loans and extensions of credit;

(2) *Government obligations.* Underwrite, distribute, buy, sell, and hold obligations of:

(i) The national government of the country in which the branch is located;

(ii) An agency or instrumentality of the national government where supported by the taxing authority, guarantee, or full faith and credit of the national government; and

(iii) A political subdivision of the country;

Provided however that, no member bank may hold, or be under commitment with respect to, such obligations for its own account in an aggregate amount exceeding the greater of:

(A) 10 percent of its Tier 1 capital; or

(B) 10 percent of the total deposits of the bank's branches in that country on the preceding year-end call report date (or the date of acquisition of the branch in the case of a branch that has not been so reported);

(3) *Other Investments.* Invest in:

(i) The securities of the central bank, clearing houses, governmental entities other than those authorized under

[2] For the purpose of this paragraph, a subsidiary other than a bank or an Edge or Agreement corporation is considered to be operating a branch in a foreign country if it has an affiliate that operates an office (other than a representative office) in that country.

[3] "Readily ascertainable events" include, but are not limited to, events such as nonpayment of taxes, rentals, customs duties, or costs of transport and loss or nonconformance of shipping documents.

paragraph (b)(2) of this section, and government-sponsored development banks of the country in which the foreign branch is located;

(ii) Other debt securities eligible to meet local reserve or similar requirements; and

(iii) Shares of automated electronic payments networks, professional societies, schools, and the like necessary to the business of the branch; Provided however that, the total investments of the bank's branches in that country under this paragraph (exclusive of securities held as required by the law of that country or as authorized under section 5136 of the Revised Statutes (12 U.S.C. 24, Seventh)) may not exceed 1 percent of the total deposits of the bank's branches in that country on the preceding year-end call report date (or on the date of acquisition of the branch in the case of a branch that has not so reported);

(4) *Credit extensions to bank's officers.* Extend credit to an officer of the bank residing in the country in which the foreign branch is located to finance the acquisition or construction of living quarters to be used as the officer's residence abroad, provided however that:

(i) The credit extension is reported promptly to the branch's home office; and

(ii) Any extension of credit exceeding $100,000 (or the equivalent in local currency) is reported also to the bank's board of directors;

(5) *Real estate loans.* Take liens or other encumbrances on foreign real estate in connection with its extensions of credit, whether or not of first priority and whether or not the real estate has been improved;

(6) *Insurance.* Act as insurance agent or broker;

(7) *Employee benefits program.* Pay to an employee of the branch, as part of an employee benefits program, a greater rate of interest than that paid to other depositors of the branch;

(8) *Repurchase agreements.* Engage in repurchase agreements involving securities and commodities that are the functional equivalents of extensions of credit;

(9) *Investment in subsidiaries.* With the Board's prior approval, acquire all of the shares of a company (except where local law requires other investors to hold directors' qualifying shares or similar types of instruments) that engages solely in activities:

(i) In which the member bank is permitted to engage; or

(ii) That are incidental to the activities of the foreign branch; and

(10) *Other activities.* With the Board's prior approval, engage in other activities that the Board determines are usual in connection with the transaction of the business of banking in the places where the member bank's branches transact business.

(c) *Reserves of foreign branches of member banks.* Member banks shall maintain reserves against foreign branch deposits when required by part 204 of this chapter (Regulation D).

§ 211.4 Edge and Agreement corporations.

(a) *Organization.*—(1) *Board authority.* The Board shall have the authority to approve:

(i) The establishment of Edge corporations; and

(ii) Investments by member banks and bank holding companies in Agreement corporations.

(2) *Permit.* A proposed Edge corporation shall become a body corporate when the Board issues a permit approving its proposed name, articles of association, and organization certificate.

(3) *Name.* The name shall include "international," "foreign," "overseas," or some similar word, but may not resemble the name of another organization to an extent that might mislead or deceive the public.

(4) **Federal Register** notice. The Board shall publish in the **Federal Register** notice of any proposal to organize an Edge corporation and will give interested persons an opportunity to express their views on the proposal.

(5) *Factors considered by the Board.* The factors considered by the Board in acting on a proposal to organize an Edge corporation include:

(i) The financial condition and history of the applicant;

(ii) The general character of its management;

(iii) The convenience and needs of the community to be served with respect to international banking and financing services; and

(iv) The effects of the proposal on competition.

(6) *Authority to commence business.*

(i) After the Board issues a permit, the Edge corporation may elect officers and otherwise complete its organization, invest in obligations of the United States Government, and maintain deposits with depository institutions, but it may not exercise any other powers until at least 25 percent of the authorized capital stock specified in the articles of association has been paid in cash, and each shareholder has paid in cash at least 25 percent of that shareholder's stock subscription.

(ii) Unexercised authority to commence business as an Edge corporation shall expire one year after issuance of the permit, unless the Board extends the period.

(7) *Amendments to articles of association.* No amendment to the articles of association shall become effective until approved by the Board.

(8) *Shareholders meeting.* An Edge Corporation shall provide in its bylaws that:

(i) A shareholders meeting shall be convened at the request of the Board within five days after the Board gives notice of the request to the Edge corporation;

(ii) Any shareholder or group of shareholders that owns or controls 25 percent or more of the shares of the Edge corporation shall attend such a meeting in person or by proxy; and

(iii) Failure by a shareholder or authorized representative to attend any such meeting in person or by proxy may result in removal or barring of such shareholders or any representatives from further participation in the management or affairs of the Edge corporation.

(b) *Nature and ownership of shares*—(1) *Shares.* (i) Shares of stock in an Edge corporation may not include no-par value shares and shall be issued and transferred only on its books and in compliance with section 25(a) of the FRA and this subpart.

(ii) The share certificates of an Edge corporation shall:

(A) Name and describe each class of shares indicating its character and any unusual attributes such as preferred status or lack of voting rights; and

(B) Conspicuously set forth the substance of:

(*1*) Any limitations upon the rights of ownership and transfer of shares imposed by section 25(a) of the FRA; and

(*2*) Any rules that the Edge corporation prescribes in its by-laws to ensure compliance with this paragraph.

(iii) Any change in status of a shareholder that causes a violation of section 25(a) of the FRA shall be reported to the Board as soon as possible, and the Edge corporation shall take such action as the Board may direct.

(2) *Ownership of Edge corporations by foreign institutions.*—(i) *Prior Board approval.* One or more foreign or foreign-controlled domestic institutions referred to in paragraph 13 of section 25(a) of the FRA (12 U.S.C. 619) may apply for the Board's prior approval to acquire directly or indirectly a majority

of the shares of the capital stock of an Edge corporation.

(ii) *Conditions and requirements.* Such an institution shall:

(A) Provide the Board information related to its financial condition and activities and such other information as the Board may require;

(B) Ensure that any transaction by an Edge corporation with an affiliate[4] is on substantially the same terms, including interest rates and collateral, as those prevailing at the same time for comparable transactions by the Edge corporation with nonaffiliated persons, and does not involve more than the normal risk of repayment or present other unfavorable features;

(C) Ensure that the Edge corporation will not provide funding on a continual or substantial basis to any affiliate or office of the foreign institution through transactions that would be inconsistent with the international and foreign business purposes for which Edge corporations are organized;

(D) Invest no more than 10 percent of the institution's capital and surplus in the aggregate amount of stock held in all Edge corporations; and

(E) In the case of a foreign institution not subject to section 4 of the BHC Act:

(*1*) Comply with any conditions that the Board may impose that are necessary to prevent undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices in the United States; and

(*2*) Give the Board 45 days' prior written notice, in a form to be prescribed by the Board, before engaging in any nonbanking activity in the United States, or making any initial or additional investments in another organization, that would require prior Board approval or notice by an organization subject to section 4 of the BHC Act; in connection with such notice, the Board may impose conditions necessary to prevent adverse effects that may result from such activity or investment.

(*3*) *Change in control.*—(*i*) *Prior notice.* Any person shall give the Board 60 days' prior written notice, in a form to be prescribed by the Board, before acquiring, directly or indirectly, 25 percent or more of the voting shares, or otherwise acquiring control, of an Edge corporation. The Board may extend the 60-day period for an additional 30 days by notifying the acquiring party. A notice under this paragraph need not be filed where a change in control is effected through a transaction requiring the Board's approval under section 3 of the BHC Act (12 U.S.C. 1842).

(*ii*) *Board review.* In reviewing a notice filed under this paragraph, the Board shall consider the factors set forth in paragraph (a)(5) of this section and may disapprove a notice or impose any conditions that it finds necessary to assure the safe and sound operation of the Edge corporation, to assure the international character of its operation, and to prevent adverse effects such as decreased or unfair competition, conflicts of interest, or undue concentration of resources.

(c) *Domestic branches*—(1) *Prior notice.* (i) An Edge corporation may establish branches in the United States 45 days after the Edge corporation has given notice to its Reserve Bank, unless the Edge corporation is notified to the contrary within that time.

(ii) The notice to the Reserve Bank shall include a copy of the notice of the proposal published in a newspaper of general circulation in the communities to be served by the branch.

(iii) The newspaper notice may appear no earlier than 90 calendar days prior to submission of notice of the proposal to the Reserve Bank. The newspaper notice must provide an opportunity for the public to give written comment on the proposal to the appropriate Reserve Bank for at least 30 days after the date of publication.

(2) *Factors considered.* The factors considered in acting upon a proposal to establish a branch are enumerated in paragraph (a)(5) of this section.

(3) *Expiration of authority.* Authority to open a branch under prior notice shall expire one year from the earliest date on which that authority could have been exercised, unless the Board extends the period.

(d) *Reserve requirements and interest rate limitations.* The deposits of an Edge or Agreement corporation are subject to parts 204 and 217 of this chapter (Regulations D and Q) in the same manner and to the same extent as if the Edge or Agreement corporation were a member bank.

(e) *Permissible activities in the United States.* An Edge corporation may engage directly or indirectly in activities in the United States that are permitted by the sixth paragraph of section 25(a) of the FRA and are incidental to international or foreign business, and in such other activities as the Board determines are incidental to international or foreign business. The following activities will ordinarily be considered incidental to an Edge corporation's international or foreign business:

(1) *Deposit activities*—(i) *Deposits from foreign governments and foreign persons.* An Edge corporation may receive in the United States transaction accounts, savings, and time deposits (including issuing negotiable certificates of deposits) from foreign governments and their agencies and instrumentalities, and from foreign persons.

(ii) *Deposits from other persons.* An Edge corporation may receive from any other person in the United States transaction accounts, savings, and time deposits (including issuing negotiable certificates of deposit) if such deposits:

(A) Are to be transmitted abroad;

(B) Consist of funds to be used for payment of obligations to the Edge corporation or collateral securing such obligations;

(C) Consist of the proceeds of collections abroad that are to be used to pay for exported or imported goods or for other costs of exporting or importing or that are to be periodically transferred to the depositor's account at another financial institution;

(D) Consist of the proceeds of extensions of credit by the Edge corporation;

(E) Represent compensation to the Edge corporation for extensions of credit or services to the customer;

(F) Are received from Edge or Agreement corporations, foreign banks and other depository institutions (as described in part 204 of this chapter (Regulation D));

(G) Are received from an organization that by its charter, license, or enabling law is limited to business that is of an international character, including Foreign Sales Corporations (26 U.S.C. 921); transportation organizations engaged exclusively in the international transportation of passengers or in the movement of goods, wares, commodities or merchandise in international or foreign commerce; and export trading companies that are exclusively engaged in activities related to international trade.

(2) *Liquid funds.* Funds of an Edge or Agreement corporation that are not currently employed in its international or foreign business, if held or invested in the United States, shall be in the form of:

(i) Cash;

(ii) Deposits with depository institutions, as described in part 204 of this chapter (Regulation D), and other Edge and Agreement corporations;

(iii) Money market instruments (including repurchase agreements with respect to such instruments), such as

[4] For purposes of this paragraph, "affiliate" means any organization that would be an "affiliate" under section 23A of the FRA (12 U.S.C. 371c) if the Edge corporation were a member bank.

bankers' acceptances, federal funds sold, and commercial paper; and

(iv) Short- or long-term obligations of, or fully guaranteed by, federal, state, and local governments and their instrumentalities.

(3) *Borrowings.* An Edge corporation may:

(i) Borrow from offices of other Edge and Agreement corporations, foreign banks, and depository institutions (as described in part 204 of this chapter (Regulation D)) or issue obligations to the United States or any of its agencies or instrumentalities;

(ii) Incur indebtedness from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States or any agency or instrumentality thereof that the Edge corporation is obligated to repurchase;

(iii) Issue long-term subordinated debt that does not qualify as a "deposit" under part 204 of this chapter (Regulation D).

(4) *Credit activities.* An Edge corporation may:

(i) Finance the following:

(A) Contracts, projects, or activities performed substantially abroad;

(B) The importation into or exportation from the United States of goods, whether direct or through brokers or other intermediaries;

(C) The domestic shipment or temporary storage of goods being imported or exported (or accumulated for export); and

(D) The assembly or repackaging of goods imported or to be exported;

(ii) Finance the costs of production of goods and services for which export orders have been received or which are identifiable as being directly for export;

(iii) Assume or acquire participations in extensions of credit, or acquire obligations arising from transactions the Edge corporation could have financed, including acquisitions of obligations of foreign governments;

(iv) Guarantee debts, or otherwise agree to make payments on the occurrence of readily ascertainable events,[5] if the guarantee or agreement specifies the maximum monetary liability thereunder and is related to a type of transaction described in paragraphs (e)(4)(i) and (ii) of this section; and

(v) Provide credit and other banking services for domestic and foreign purposes to foreign governments and their agencies and instrumentalities; foreign persons; and organizations of the type described in paragraph 211.4(e)(1)(ii)(G) of this section.

(5) *Payments and collections.* An Edge corporation may receive checks, bills, drafts, acceptances, notes, bonds, coupons, and other instruments for collection abroad, and collect such instruments in the United States for a customer abroad; and may transmit and receive wire transfers of funds and securities for depositors.

(6) *Foreign exchange.* An Edge corporation may engage in foreign exchange activities.

(7) *Fiduciary and investment advisory activities.* An Edge corporation may:

(i) Hold securities in safekeeping for, or buy and sell securities upon the order and for the account and risk of, a person, provided such services for U.S. persons shall be with respect to foreign securities only;

(ii) Act as paying agent for securities issued by foreign governments or other entities organized under foreign law;

(iii) Act as trustee, registrar, conversion agent, or paying agent with respect to any class of securities issued to finance foreign activities and distributed solely outside the United States;

(iv) Make private placements of participations in its investments and extensions of credit; however, except to the extent permissible for member banks under section 5136 of the Revised Statutes (12 U.S.C. 24, Seventh), no Edge corporation may otherwise engage in the business of underwriting, distributing, or buying or selling securities in the United States;

(v) Act as investment or financial adviser by providing portfolio investment advice and portfolio management with respect to securities, other financial instruments, real property interests and other investment assets,[6] and by providing advice on mergers and acquisitions, provided such services for U.S. persons shall be with respect to foreign assets only; and

(vi) Provide general economic information and advice, general economic statistical forecasting services and industry studies, provided such services for U.S. persons shall be with respect to foreign economies and industries only.

(8) *Banking services for employees.* Provide banking services, including deposit services, to the officers and employees of the Edge corporation and its affiliates; however, extensions of credit to such persons shall be subject to the restrictions of part 215 of this chapter (Regulation O) as if the Edge corporation were a member bank.

(9) *Other activities.* With the Board's prior approval, engage in other activities in the United States that the Board determines are incidental to the international or foreign business of Edge corporations.

(f) *Agreement corporations.* With the prior approval of the Board, a member bank or bank holding company may invest in a federally- or state-chartered corporation that has entered into an agreement or undertaking with the Board that it will not exercise any power that is impermissible for an Edge corporation under this subpart.

§ 211.5 Investments and activities abroad.

(a) *General policy.* Activities abroad, whether conducted directly or indirectly, shall be confined to activities of a banking or financial nature and those that are necessary to carry on such activities. In doing so, investors shall at all times act in accordance with high standards of banking or financial prudence, having due regard for diversification of risks, suitable liquidity, and adequacy of capital. Subject to these considerations and the other provisions of this section, it is the Board's policy to allow activities abroad to be organized and operated as best meets corporate policies.

(b) *Investment requirements*(1) *Eligible investments.* Subject to the limitations in paragraph (b)(2) of this section, an investor may directly or indirectly:

(i) Invest in a subsidiary that engages solely in activities listed in paragraph (d) of this section or in such other activities as the Board has determined in the circumstances of a particular case are permissible; provided however that, in the case of an acquisition of a going concern, existing activities that are not otherwise permissible for a subsidiary may account for not more than 5 percent of either the consolidated assets or revenues of the acquired organization;

(ii) Invest in a joint venture provided that, unless otherwise permitted by the Board, not more than 10 percent of the joint venture's consolidated assets or revenues are attributable to activities not listed in paragraph (d) of this section; and

(iii) Make portfolio investments in an organization, provided however that:

(A) The total direct and indirect portfolio investments by the investor and its affiliates in organizations engaged in activities that are not

[5] "Readily ascertainable events" include, but are not limited to, events such as nonpayment of taxes, rentals, customs duties, or cost of transport and loss or nonconformance of shipping documents.

[6] For purposes of this section, management of an investment portfolio does not include operational management of real property, or industrial or commercial assets.

permissible for joint ventures do not exceed:

(*1*) 40 percent of the total equity of the organization, when combined with shares in the organization held in trading or dealing accounts pursuant to paragraph (d)(14) of this section and shares in the organization held under any other authority; or

(*2*) 25 percent of the investor's Tier 1 capital where the investor is a bank holding company or 100 percent of Tier 1 capital for any other investor, when combined with underwriting commitments and shares held in trading or dealing accounts pursuant to paragraph (d)(14) of this section;[7] and

(B) Any loans and extensions of credit made by an investor or its affiliates to the organization are on substantially the same terms, including interest rates and collateral, as those prevailing at the same time for comparable transactions between the investor or its affiliates and nonaffiliated persons.

(2) *Direct investments by member banks.* A member bank's direct investments under section 25 of the FRA shall be limited to:

(i) Foreign banks;

(ii) Foreign organizations formed for the sole purpose of either holding shares of a foreign bank or performing nominee, fiduciary, or other banking services incidental to the activities of a foreign branch or foreign bank affiliate of the member bank; and

(iii) Subsidiaries established pursuant to § 211.3(b)(9) of this subpart.

(3) *Investment limit.* In computing the amount that may be invested in any organization under this section, there shall be included any unpaid amount for which the investor is liable and any investments in the same organization held by affiliates under any authority.

(4) *Divestiture.* An investor shall dispose of an investment promptly (unless the Board authorizes retention) if:

(i) The organization invested in:

(A) Engages in the general business of buying or selling goods, wares, merchandise, or commodities in the United States;

(B) Engages directly or indirectly in other business in the United States that is not permitted to an Edge corporation in the United States except that an investor may hold up to 5 percent of the shares of a foreign company that engages directly or indirectly in business in the United States that is not permitted to an Edge corporation; or

(C) Engages in impermissible activities to an extent not permitted under paragraph (b)(1) of this section; or

(ii) After notice and opportunity for hearing, the investor is advised by the Board that its investment is inappropriate under the FRA, the BHC Act, or this subpart.

(c) *Investment procedures.*[8] Direct and indirect investments shall be made in accordance with the general consent, prior notice, or specific consent procedures contained in this paragraph. Except as the Board may otherwise determine, in order for an investor to make investments under the general consent procedure, the investor and any other investor of which it is a subsidiary shall be in compliance with applicable minimum standards for capital adequacy. The Board may at any time, upon notice, modify or suspend the general consent and prior notice procedures with respect to any investor or with respect to the acquisition of shares of organizations engaged in particular kinds of activities. An investor shall apply for and receive the prior specific consent of the Board for its initial investment in its first subsidiary or joint venture unless an affiliate has made such an investment. Authority to make investments under prior notice or specific consent shall expire one year from the earliest date on which the authority could have been exercised, unless the Board extends the period.

(1) *General consent.* Subject to the other limitations of this section, the Board grants its general consent for the following:[9]

(i) Any investment in a joint venture or subsidiary, and any portfolio investment, if the total amount invested (in one transaction or in a series of transactions) does not exceed the lesser of:

(A) $25 million; or

(B) 5 percent of the investor's Tier 1 capital in the case of a member bank, bank holding company, or Edge corporation engaged in banking, or 25 percent of the investor's Tier 1 capital in the case of an Edge corporation not engaged in banking;

(ii) Any additional investment in an organization in any calendar year so long as:

(A) The total amount invested in that calendar year does not exceed 10 percent of the investor's Tier 1 capital; and

(B) The total amount invested under § 211.5 (including investments made pursuant to specific consent or prior notice) in that calendar year does not exceed cash dividends reinvested under paragraph (c)(1)(iii) of this section plus 10 percent of the investor's direct and indirect historical cost[10] in the organization, which investment authority, to the extent unexercised, may be carried forward and accumulated for up to five consecutive years;

(iii) Any additional investment in an organization in an amount equal to cash dividends received from that organization during the preceding twelve calendar months; or

(iv) Any investment that is acquired from an affiliate at net asset value.

(2) *Prior notice.* An investment that does not qualify under the general consent procedure may be made after the investor has given 45 days' prior written notice to the Board. The Board may waive the 45-day period if it finds immediate action is required by the circumstances presented. The notice period shall commence at the time the notice is accepted. The Board may suspend the period or act on the investment under the Board's specific consent procedures.

(3) *Specific consent.* Any investment that does not qualify for either the general consent or the prior notice procedure shall not be consummated without the specific consent of the Board.

(d) *Permissible activities.* The Board has determined that the following activities are usual in connection with the transaction of banking or other financial operations abroad:

(1) Commercial and other banking activities;

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[7] For this purpose, a direct subsidiary of a member bank is deemed to be an investor.

[8] When necessary, the general consent and prior notice provisions of this section constitute the Board's approval under the eighth paragraph of section 25(a) of the FRA for investments in excess of the limitations therein based on capital and surplus.

[9] In determining compliance with these limits, an investor shall combine the value of all shares of an organization held in trading or dealing accounts under paragraph 211.5(d)(14)of this section with investments in the same organization. Shares held in trading or dealing accounts are also subject to the limits in paragraph 211.5(d)(14) of this section.

[10] The "historical cost" of an investment consists of the actual amounts paid for shares or otherwise contributed to the capital accounts, as measured in dollars at the exchange rate in effect at the time each investment was made. It does not include subordinated debt or unpaid commitments to invest even though these may be considered investments for other purposes of this part. For investments acquired indirectly as a result of acquiring a subsidiary, the historical cost to the investor is measured as of the date of acquisition of the subsidiary at the net asset value of the equity interest in the case of subsidiaries and joint ventures, and in the case of portfolio investments, at the book carrying value.

(2) Financing, including commercial financing, consumer financing, mortgage banking, and factoring;

(3) Leasing real or personal property, or acting as agent, broker, or advisor in leasing real or personal property, if the lease serves as the functional equivalent of an extension of credit to the lessee of the property;

(4) Acting as fiduciary;

(5) Underwriting credit life insurance and credit accident and health insurance;

(6) Performing services for other direct or indirect operations of a U.S. banking organization, including representative functions, sale of long-term debt, name saving, holding assets acquired to prevent loss on a debt previously contracted in good faith, and other activities that are permissible domestically for a bank holding company under sections 4(a)(2)(A) and 4(c)(1)(C) of the BHC Act;

(7) Holding the premises of a branch of an Edge corporation or member bank or the premises of a direct or indirect subsidiary, or holding or leasing the residence of an officer or employee of a branch or subsidiary;

(8) Providing investment, financial, or economic advisory services;

(9) General insurance agency and brokerage;

(10) Data processing;

(11) Organizing, sponsoring, and managing a mutual fund if the fund's shares are not sold or distributed in the United States or to U.S. residents and the fund does not exercise managerial control over the firms in which it invests;

(12) Performing management consulting services provided that such services when rendered with respect to the U.S. market shall be restricted to the initial entry;

(13) Underwriting, distributing and dealing in debt securities outside the United States;

(14) Underwriting, distributing, and dealing in equity securities outside the United States as follows:

(i) By an investor, or an affiliate, that had commenced such activities prior to March 27, 1991, and subject to limitations in effect at that time (12 CFR part 211 (1990)); or

(ii) With the approval of the Board, underwriting equity securities if:

(A) Commitments by an investor and its affiliates for the shares of an organization do not in the aggregate exceed the lesser of $60 million or 25 percent of the investor's Tier 1 capital unless the underwriter is covered by binding commitments from subunderwriters or other purchasers obtained by the investor or its affiliates; and

(B) Commitments by an investor and its affiliates for the shares of an organization in excess of those permitted by paragraph (d)(14)(ii)(A) of this section provided that:

(1) The underwriting level approved by the Board for the investor and its affiliates in excess of the limitations of paragraph (d)(14)(ii)(A) of this section is fully deducted from the capital of the bank holding company, and from the capital of the bank where the securities activities are conducted by a subsidiary of a U.S. bank;[11] and

(*2*) In the Board's judgment such bank holding company and bank would remain strongly capitalized after such deduction from capital; and

(iii) With the approval of the Board, dealing in the shares of an organization (including the shares of a U.S. organization with respect to foreign persons only and subject to the limitations on owning or controlling shares of a company in section 4 of the BHC Act and the Board's Regulation Y (12 CFR part 225)) where the shares held in the trading or dealing accounts of an investor and its affiliates, when combined with any shares held pursuant to the authority provided under paragraph (b) of this section, do not in the aggregate exceed the lesser of $30 million or 10 percent of the investor's Tier 1 capital, provided however that:

(A) For purposes of determining compliance with the limitations of this paragraph (d)(14)(iii) and paragraph (b)(1)(iii)(A)(*2*) of this section, long and short positions in the same security may be netted and positions in a security may be offset by futures, forwards, options, and similar instruments referenced to the same security through hedging methods approved by the Board, except that any position in a security shall not be deemed to have been reduced by more than 75 percent;

(B) Any shares held in trading or dealing accounts for longer than 90 days shall be reported to the senior management of the investor;

(C) Any shares acquired pursuant to an underwriting commitment for up to 90 days after the payment date for such underwriting shall not be subject to the dollar and percentage limitations of paragraph (d)(14)(iii) of this section or the investment provisions of paragraph (b) of this section, other than the aggregate limits in paragraph (b)(1)(iii)(A)(*2*) of this section; and

(D) Shares of an organization held in all trading and dealing accounts, when combined with all other equity interests in the organization held by the investor and its affiliates, other than underwriting commitments for shares and shares held pursuant to an underwriting for 90 days following the payment date for such shares, must conform to the permissible limits for investments in an organization under paragraph (b) of this section.[12]

(iv) Underwriting commitments for shares and shares held by an affiliate authorized to underwrite equity securities under section 4(c)(8) of the BHC Act shall not be included in determining compliance with the aggregates limits in paragraph (b)(1)(iii)(A)(*2*) and the limits of paragraphs (d)(14)(ii)(A) and (iii) of this section, except that shares held by such an affiliate shall be included for purposes of determining compliance with paragraph (d)(14)(iii)(D) of this section.

(15) Operating a travel agency provided that the travel agency is operated in connection with financial services offered abroad by the investor or others;

(16) Underwriting life, annuity, pension fund-related, and other types of insurance, where the associated risks have been previously determined by the Board to be actuarially predictable, provided however that:

(i) Investments in, and loans and extensions of credit (other than loans and extensions of credit fully secured in accordance with the requirements of section 23A of the FRA (12 U.S.C. 371c) or with such other standards as the Board may require) to, the company by the investor or its affiliates are deducted from the capital of the investor;[13] and

(ii) Activities conducted directly or indirectly by a subsidiary of a U.S. insured bank are excluded from the authority of this paragraph.

(17) Acting as a futures commission merchant for financial instruments of the type, and on exchanges, that the Board has previously approved, provided however that:

(i) Activities are conducted in accordance with the standards set forth in § 225.25(b)(18) of the Board's Regulation Y (12 CFR 225.25(b)(18)); and

[11] Fifty percent of such capital deductions shall be from Tier 1 capital.

[12] Underwriting commitments are combined with shares held by an investor and its affiliates (other than an affiliate authorized to deal in shares under section 4(c)(8) of the BHC Act) in dealing or trading accounts and with portfolio investments for purposes of determining compliance with the aggregate limits in paragraph (b)(1)(iii)(A)(*2*) of this section.

[13] Fifty percent of such capital deduction shall be from Tier 1 capital.

(ii) Prior approval must be obtained for activities conducted on an exchange that requires members to guarantee or otherwise contract to cover losses suffered by other members.

(18) Acting as principal or agent in swap transactions[14] subject to any limitations applicable to state member banks under the Board's Regulation H (12 CFR part 208), except that where such activities involve contracts related to a commodity, such contracts must provide an option for cash settlement and the option must be exercised upon settlement.

(19) Engaging in activities that the Board has determined in Regulation Y (12 CFR 225.25(b)) are closely related to banking under section 4(c)(8) of the BHC Act; and

(20) With the Board's specific approval, engaging in other activities that the Board determines are usual in connection with the transaction of the business of banking or other financial operations abroad and are consistent with the FRA or the BHC Act.

(e) *Debts previously contracted.* Shares or other ownership interests acquired to prevent a loss upon a debt previously contracted in good faith are not subject to the limitations or procedures of this section; however, they shall be disposed of promptly but in no event later than two years after their acquisition, unless the Board authorizes retention for a longer period.

(f) *Investments made through debt-for-equity conversions*—(1) *Permissible investments.* A bank holding company may make investments through the conversion of sovereign or private debt obligations of an eligible country, either through direct exchange of the debt obligations for the investment or by a payment for the debt in local currency, the proceeds of which, including an additional cash investment not exceeding in the aggregate more than 10 percent of the fair value of the debt obligations being converted as part of such investment, are used to purchase the following investments:

(i) *Public sector companies.* A bank holding company may acquire up to and including 100 percent of the shares of (or other ownership interests in) any foreign company located in an eligible country if the shares are acquired from the government of the eligible country or from its agencies or instrumentalities.

(ii) *Private sector companies.* A bank holding company may acquire up to and including 40 percent of the shares, including voting shares, of (or other ownership interests in) any other foreign company located in an eligible country subject to the following conditions:

(A) A bank holding company may acquire more than 25 percent of the voting shares of the foreign company only if another shareholder or control group of shareholders unaffiliated with the bank holding company holds a larger block of voting shares of the company;

(B) The bank holding company and its affiliates may not lend or otherwise extend credit to the foreign company in amounts greater than 50 percent of the total loans and extensions of credit to the foreign company; and

(C) The bank holding company's representation on the board of directors or on management committees of the foreign company may be no more than proportional to its shareholding in the foreign company.

(2) *Investments by bank subsidiary of bank holding company.* Upon application, the Board may permit an indirect investment to be made pursuant to this paragraph through an insured bank subsidiary of the bank holding company where the bank holding company demonstrates that such ownership is consistent with the purposes of the FRA. In granting its consent, the Board may impose such conditions as it deems necessary or appropriate to prevent adverse effects, including prohibiting loans from the bank to the company in which the investment is made.

(3) *Divestiture*—(i) *Time limits for divestiture.* The bank holding company shall divest the shares of, or other ownership interests in, any company acquired pursuant to this paragraph (unless the retention of the shares or other ownership interest is otherwise permissible at the time required for divestiture) within the longer of:

(A) Ten years from the date of acquisition of the investment except that the Board may extend such period if, in the Board's judgment, such an extension would not be detrimental to the public interest; or

(B) Two years from the date on which the bank holding company is permitted to repatriate in full the investment in the foreign company;

Provided however that, in either event divestiture occurs within fifteen years of the date of the acquisition.

(ii) *Report to the Board.* The bank holding company shall report to the Board on its plans for divesting an investment made under this paragraph two years prior to the final date for divestiture, in a manner to be prescribed by the Board.

(iii) *Other conditions requiring divestiture.* All investments made pursuant to this paragraph are subject to paragraphs (b)(4)(i)(A) and (B) of this section requiring prompt divestiture (unless the Board upon application authorizes retention) if the company invested in engages in impermissible business in the United States that exceeds in the aggregate 10 percent of the company's consolidated assets or revenues calculated on an annual basis; provided however that, such company may not engage in activities in the United States that consist of banking or financial operations (as defined in § 211.23(f)(5)(iii)(B) of this chapter), or types of activities permitted by regulation or order under section 4(c)(8) of the BHC Act, except under regulations of the Board or with the prior approval of the Board.

(4) *Investment procedures*—(i) *General consent.* Subject to the other limitations of this paragraph, the Board grants its general consent for investments made under this paragraph if the total amount invested does not exceed the greater of $25 million or 1 percent of the Tier 1 capital of the investor.

(ii) All other investments shall be made in accordance with the procedures of paragraph (c) of this section requiring prior notice or specific consent.

(5) *Conditions*—(i) *Name.* Any company acquired pursuant to this paragraph shall not bear a name similar to the name of the acquiring bank holding company or any of its affiliates.

(ii) *Confidentiality.* Neither the bank holding company nor its affiliates shall provide to any company acquired pursuant to this paragraph any confidential business information or other information concerning customers that are engaged in the same or related lines of business as the company.

§ 211.6 Lending limits and capital requirements.

(a) *Acceptances of Edge corporations*—(1) *Limitations.* An Edge corporation shall be and remain fully secured for:

(i) All acceptances outstanding in excess of 200 percent of its Tier 1 capital; and

(ii) All acceptances outstanding for any one person in excess of 10 percent of its Tier 1 capital;

Provided however that, these limitations apply only to acceptances of the types described in paragraph 7 of section 13 of the FRA (12 U.S.C. 372).

(2) *Exceptions.* These limitations do not apply if the excess represents the

[14] Swap transactions involving equity instruments are separately authorized under paragraph (d)(14) of this section.

international shipment of goods and the Edge corporation is:

(i) Fully covered by primary obligations to reimburse it that are guaranteed by banks or bankers; or

(ii) Covered by participation agreements from other banks, as such agreements are described in section 250.165 of this chapter.

(b) *Loans and extensions of credit to one person*—(1) *Limitations.* Except as the Board may otherwise specify:

(i) The total loans and extensions of credit outstanding to any person by an Edge corporation engaged in banking and its direct or indirect subsidiaries may not exceed 15 percent of the Edge corporation's Tier 1 capital;[15] and

(ii) The total loans and extensions of credit to any person by a foreign bank or Edge corporation subsidiary of a member bank, and by majority-owned subsidiaries of a foreign bank or Edge corporation, when combined with the total loans and extensions of credit to the same person by the member bank and its majority-owned subsidiaries, may not exceed the member bank's limitation on loans and extensions of credit to one person.

(2) "Loans and extensions of credit" has the meaning set forth in § 211.2(p) of this part[16] and, for purposes of this paragraph, include:

(i) Acceptances outstanding that are not of the types described in paragraph 7 of section 13 of the FRA (12 U.S.C. 372);

(ii) Any liability of the lender to advance funds to or on behalf of a person pursuant to a guarantee, standby letter of credit, or similar agreements;

(iii) Investments in the securities of another organization except where the organization is a subsidiary; and

(iv) Any underwriting commitments to an issuer of securities where no binding commitments have been secured from subunderwriters or other purchasers.

(3) *Exceptions.* The limitations of paragraph (b)(1) of this section do not apply to:

(i) Deposits with banks and federal funds sold;

(ii) Bills or drafts drawn in good faith against actual goods and on which two or more unrelated parties are liable;

(iii) Any bankers' acceptance of the kind described in paragraph 7 of section 13 of the FRA that is issued and outstanding;

(iv) Obligations to the extent secured by cash collateral or by bonds, notes, certificates of indebtedness, or Treasury bills of the United States;

(v) Loans and extensions of credit that are covered by bona fide participation agreements; or

(vi) Obligations to the extent supported by the full faith and credit of the following:

(A) The United States or any of its departments, agencies, establishments, or wholly-owned corporations (including obligations to the extent insured against foreign political and credit risks by the Export-Import Bank of the United States or the Foreign Credit Insurance Association), the International Bank for Reconstruction and Development, the International Finance Corporation, the International Development Association, the Inter-American Development Bank, the African Development Bank, the Asian Development Bank, or the European Bank for Reconstruction and Development;

(B) Any organization if at least 25 percent of such an obligation or of the total credit is also supported by the full faith and credit of, or participated in by, any institution designated in paragraph (b)(3)(vi)(A) of this section in such manner that default to the lender will necessarily include default to that entity. The total loans and extensions of credit under this paragraph (b)(3)(vi)(B) to any person shall at no time exceed 100 percent of the Tier 1 capital of the Edge corporation.

(c) *Capitalization.* An Edge corporation shall at all times be capitalized in an amount that is adequate in relation to the scope and character of its activities. In the case of an Edge corporation engaged in banking, after December 31, 1992, its minimum ratio of qualifying total capital to weighted-risk assets, as determined under the Capital Adequacy Guidelines, shall not be less than 10 percent, of which at least 50 percent shall consist of Tier 1 capital; provided however that for purposes of this paragraph, no limitation shall apply as to the inclusion of subordinated debt that qualifies as Tier 2 capital under the Capital Adequacy Guidelines.

§ 211.7 Supervision and reporting.

(a) *Supervision*—(1) *Foreign branches and subsidiaries.* Organizations conducting international banking operations under this subpart shall supervise and administer their foreign branches and subsidiaries in such a manner as to ensure that their operations conform to high standards of banking and financial prudence. Effective systems of records, controls, and reports shall be maintained to keep management informed of their activities and condition. Such systems shall provide, in particular, information on risk assets, liquidity management, operations, internal controls, and conformance to management policies. Reports on risk assets shall be sufficient to permit an appraisal of credit quality and assessment of exposure to loss, and for this purpose provide full information on the condition of material borrowers. Reports on the operations and controls shall include internal and external audits of the branch or subsidiary.

(2) *Joint ventures.* Investors shall maintain sufficient information with respect to joint ventures to keep informed of their activities and condition. Such information shall include audits and other reports on financial performance, risk exposure, management policies, operations, and controls. Complete information shall be maintained on all transactions with the joint venture by the investor and its affiliates.

(3) *Availability of reports to examiners.* The reports and information specified in paragraphs (a)(1) and (2) of this section shall be made available to examiners of the appropriate bank supervisory agencies.

(b) *Examinations.* Examiners appointed by the Board shall examine each Edge corporation once a year. An Edge corporation shall make available to examiners sufficient information to assess its condition and operations and the condition and activities of any organization whose shares it holds.

(c) *Reports*—(1) *Reports of condition.* Each Edge corporation shall make reports of condition to the Board at such times and in such form as the Board may prescribe. The Board may require that statements of condition or other reports be published or made available for public inspection.

(2) *Foreign operations.* Edge and Agreement corporations, member banks, and bank holding companies shall file such reports on their foreign operations as the Board may require.

(3) *Acquisition or disposition of shares.* A member bank, Edge or Agreement corporation or a bank holding company shall report, in a manner prescribed by the Board, any acquisition or disposition of shares.

(d) *Filing and processing procedures.*

[15] For purposes of this subsection, "subsidiary" includes subsidiaries controlled by the Edge corporation but does not include companies otherwise controlled by affiliates of the Edge corporation.

[16] In the case of a foreign government, these include loans and extensions of credit to the foreign government's departments or agencies deriving their current funds principally from general tax revenues. In the case of a partnership or firm, these include loans and extensions of credit to its members and, in the case of a corporation, these include loans and extensions of credit to the corporation's affiliates where the affiliate incurs the liability for the benefit of the corporation.

(1) Unless otherwise directed by the Board, applications, notifications, and reports required by this part shall be filed with the Reserve Bank of the district in which the parent bank or bank holding company is located or, if none, the Reserve Bank of the district in which the applying or reporting institution is located. Instructions and forms for such applications, notifications and reports are available from the Reserve Banks.

(2) The Board shall act on an application or notification under this subpart within 60 calendar days after the Reserve Bank has accepted the application or notification unless the Board notifies the investor that the 60-day period is being extended and states the reasons for the extension.

Subpart B—Foreign Banking Organizations

3. Section 211.21 is revised to read as follows:

§ 211.21 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Board of Governors of the Federal Reserve System ("Board") under the authority of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) ("BHC Act"); and the International Banking Act of 1978 (12 U.S.C. 3101 *et seq.*) ("IBA").

(b) *Purpose and scope.* This subpart is in furtherance of the purposes of the BHC Act and the IBA. It applies to foreign banks and foreign banking organizations with respect to:

(1) The limitations on interstate banking under section 5 of the IBA (12 U.S.C. 3103); and

(2) The exemptions from the nonbanking prohibitions of the BHC Act and the IBA afforded by sections 2(h) and 4(c)(9) of the BHC Act (12 U.S.C. 1841(h) and 1843(c)(9)).

4. In § 211.22, paragraphs (a)(2), and (a)(5) are revised to read as follows:

§ 211.22 Interstate banking operations of foreign banking organizations.

* * * * *

(a) *Definitions.* * * *

* * * * *

(2) *Banking subsidiary,* with respect to a specified foreign bank, means a bank that is a subsidiary as the terms *bank* and *subsidiary* are defined in section 2 of the BHC Act (12 U.S.C. 1841).

* * * * *

(5) *Foreign bank,* for purposes of this section, is an organization that is organized under the laws of a foreign country and that engages in the business of banking.

5. In § 211.23, paragraphs (d), (e), (f)(4), (f)(5), (g), and (h) are revised, and paragraph (i) is added, to read as follows:

§ 211.23 Nonbanking activities of foreign banking organizations.

* * * * *

(d) *Loss of eligibility for exemptions.*

(1) A foreign banking organization that qualified under paragraph (b) of this section shall cease to be eligible for the exemptions of this section if it fails to meet the requirements of paragraph (b) of this section for two consecutive years as reflected in its Annual Reports (F.R. Y-7) filed with the Board.

(2) A foreign banking organization that ceases to be eligible for the exemptions of this section may continue to engage in activities or retain investments commenced or acquired prior to the end of the first fiscal year for which its Annual Report reflects nonconformance with paragraph (b) of this section. Activities commenced or investments made after that date shall be terminated or divested within three months of the filing of the second Annual Report unless the Board grants consent to continue the activity or retain the investment under paragraph (e) of this section.

(3) A foreign banking organization that ceases to qualify under paragraph (b) of this section, or an affiliate of such foreign banking organization, that requests a specific determination of eligibility under paragraph (e) of this section may, prior to the Board's determination on eligibility, continue to engage in activities and make investments under the provisions of paragraphs (f)(1), (2) and (4) of this section.

(e) *Specific determination of eligibility for nonqualifying foreign banking organizations.* (1) A foreign banking organization that does not qualify under paragraph (b) of this section for the exemptions afforded by this section, or that has lost its eligibility for the exemptions under paragraph (d) of this section, may apply to the Board for a specific determination of eligibility for the exemptions.

(2) A foreign banking organization may apply for a specific determination prior to the time it ceases to be eligible for the exemptions afforded by this section.

(3) In determining whether eligibility for the exemptions would be consistent with the purposes of the BHC Act and in the public interest, the Board shall consider:

(i) The history and the financial and managerial resources of the organization;

(ii) The amount of its business in the United States;

(iii) The amount, type, and location of its nonbanking activities, including whether such activities may be conducted by U.S. banks or bank holding companies; and

(iv) Whether eligibility of the foreign banking organization would result in undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

(4) Such determination shall be subject to any conditions and limitations imposed by the Board, including any requirements to cease activities or dispose of investments.

(5) Determinations of eligibility would generally not be granted where a majority of the business of the foreign banking organization derives from commercial or industrial activities or where the U.S. banking business of the organization is larger than the non-U.S. banking business conducted directly by the foreign bank or banks (as defined in § 211.2(j) of this part) of the organization.

(f) *Permissible activities and investments.* A foreign banking organization that qualifies under paragraph (b) of this section may:

* * * * *

(4) Own or control voting shares of any company in a fiduciary capacity under circumstances that would entitle such shareholding to an exemption under section 4(c)(4) of the BHC Act if the shares were held or acquired by a bank.

(5) Own or control voting shares of a foreign company that is engaged directly or indirectly in business in the United States other than that which is incidental to its international or foreign business, subject to the following limitations:

(i) More than 50 percent of the foreign company's consolidated assets shall be located, and consolidated revenues derived from, outside the United States; provided however that, if the foreign company fails to meet the requirements of this paragraph for two consecutive years (as reflected in Annual Reports (F.R. Y-7)) filed with the Board by the foreign banking organization, the foreign company shall be divested or its activities terminated within one year of the filing of the second consecutive Annual Report that reflects nonconformance with the requirements of this paragraph, unless the Board

grants consent to retain the investment under paragraph (g) of this section;

(ii) The foreign company shall not directly underwrite, sell, or distribute, nor own or control more than 5 percent of the voting shares of a company that underwrites, sells, or distributes securities in the United States except to the extent permitted bank holding companies;

(iii) If the foreign company is a subsidiary of the foreign banking organization, the foreign company must be, or must control, an operating company, and its direct or indirect activities in the United States shall be subject to the following limitations:

(A) The foreign company's activities in the United States shall be the same kind of activities or related to the activities engaged in directly or indirectly by the foreign company abroad as measured by the "establishment" categories of the Standard Industrial Classification (SIC) (an activity in the United States shall be considered related to an activity outside the United States if it consists of supply, distribution, or sales in furtherance of the activity);

(B) The foreign company may engage in activities in the United States that consist of banking, securities, insurance or other financial operations, or types of activities permitted by regulation or order under section 4(c)(8) of the BHC Act, only under regulations of the Board or with the prior approval of the Board.

(*1*) Activities within Division H (Finance, Insurance, and Real Estate) of the SIC shall be considered banking or financial operations for this purpose, with the exception of acting as operators of nonresidential buildings (SIC 6512), operators of apartment buildings (SIC 6513), operators of dwellings other than apartment buildings (SIC 6514), and operators of residential mobile home sites (SIC 6515); and operating title abstract offices (SIC 6541); and

(*2*) The following activities shall be considered financial activities and may be engaged in only with the approval of the Board under subsection (g): Credit reporting services (SIC 7323); computer and data processing services (SIC 7371, 7372, 7373, 7374, 7375, 7376, 7377, 7378, and 7379); armored car services (SIC 7381); management consulting (SIC 8732, 8741, 8742, and 8748); certain rental and leasing activities (SIC 4741, 7352, 7353, 7359, 7513, 7514, 7515, and 7519); accounting, auditing and bookkeeping services (SIC 8721); courier services (SIC 4215 and 4513); and arrangement of passenger transportation (SIC 4724, 4725, and 4729).

(g) *Exemptions under section 4(c)(9) of the BHC Act.* A foreign banking organization that is of the opinion that other activities or investments may, in particular circumstances, meet the conditions for an exemption under section 4(c)(9) of the BHC Act may apply to the Board for such a determination by submitting to the Reserve Bank of the District in which its banking operations in the United States are principally conducted a letter setting forth the basis for that opinion.

(h) *Reports.* (1) The foreign banking organization shall inform the Board through the organization's Reserve Bank within 30 days after the close of each quarter of all shares of companies engaged, directly or indirectly, in activities in the United States that were acquired during such quarter under the authority of this section.

(2) The foreign banking organization shall also report any direct activities in the United States commenced during such quarter by a foreign subsidiary of the foreign banking organization. This information shall (unless previously furnished) include a brief description of the nature and scope of each company's business in the United States, including the 4-digit SIC numbers of the activities in which the company engages. Such information shall also include the 4-digit SIC numbers of the direct parent of any U.S. company acquired, together with a statement of total assets and revenues of the direct parent.

(i) *Availability of information.* If any information required under this section is unknown and not reasonably available to the foreign banking organization, either because obtaining it would involve unreasonable effort or expense or because it rests peculiarly within the knowledge of a company that is not controlled by the organization, the organization shall:

(1) Give such information on the subject as it possesses or can reasonably acquire together with the sources thereof; and

(2) Include a statement either showing that unreasonable effort or expense would be involved or indicating that the company whose shares were acquired is not controlled by the organization and stating the result of a request for information.

6. Subpart C (§ § 211.31 through 211.34) is revised to read as follows:

Subpart C—Export Trading Companies

Subpart C—Export Trading Companies

§ 211.31 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Board of Governors of the Federal Reserve System ("Board") under the authority of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*) ("BHC Act"), the Bank Export Services Act (Title II, Pub. L. 97-290, 96 Stat. 1235 (1982)) ("BESA"), and the Export Trading Company Act Amendments of 1988 (Title III, Pub. L. 100-418, 102 Stat. 1384 (1988)) ("ETC Act Amendments").

(b) *Purpose and scope.* This subpart is in furtherance of the purposes of the BHC Act, the BESA, and the ETC Act Amendments, the latter two statutes being designed to increase U.S. exports by encouraging investments and participation in export trading companies by bank holding companies and the specified investors. The provisions of this subpart apply to the following (hereinafter referred to as "eligible investors"):

(1) Bank holding companies as defined in section 2 of the BHC Act (12 U.S.C. 1841(a));

(2) Edge and Agreement corporations, as described in § 211.1(c) of this part, that are subsidiaries of bank holding companies but are not subsidiaries of banks;

(3) Bankers' banks as described in section 4(c)(14)(F)(iii) of the BHC Act (12 U.S.C. 1843(c)(14)(F)(iii)); and

(4) Foreign banking organizations as defined in § 211.23(a)(2) of this part.

§ 211.32 Definitions.

The definitions of § 211.2 in subpart A apply to this subpart subject to the following:

(a) *Export trading company* means a company that is exclusively engaged in activities related to international trade and, by engaging in one or more export trade services, derives:

(1) At least one-third of its revenues in each consecutive four-year period from the export of, or from facilitating the export of, goods and services produced in the United States by persons other than the export trading company or its subsidiaries; and

(2) More revenues in each four-year period from export activities as described in paragraph (a)(1) of this section than it derives from the import, or facilitating the import, into the United States of goods or services produced outside the United States.

For purposes of this section, "revenues" shall include net sales revenues from exporting, importing, or third party trade

in goods by the export trading company for its own account, and gross revenues derived from all other activities of the export trading company.

(b) The terms *bank, company* and *subsidiary* have the same meanings as those contained in section 2 of the BHC Act (12 U.S.C. 1841).

§ 211.33 Investments and extensions of credit.

(a) *Amount of investments.* In accordance with the procedures of § 211.34 of this subpart, an eligible investor may invest no more than 5 percent of its consolidated capital and surplus in one or more export trading companies, except that an Edge or Agreement corporation not engaged in banking may invest as much as 25 percent of its consolidated capital and surplus but no more than 5 percent of the consolidated capital and surplus of its parent bank holding company.

(b) *Extensions of credit*—(1) *Amount.* An eligible investor in an export trading company or companies may extend credit directly or indirectly to the export trading company or companies in a total amount that at no time exceeds 10 percent of the investor's consolidated capital and surplus.

(2) *Terms*—(i) An eligible investor in an export trading company may not extend credit directly or indirectly to the export trading company or any of its customers or to any other investor holding 10 percent or more of the shares of the export trading company on terms more favorable than those afforded similar borrowers in similar circumstances, and such extensions of credit shall not involve more than the normal risk of repayment or present other unfavorable features.

(ii) For the purposes of this provision, an investor in an export trading company includes any affiliate of the investor.

(3) *Collateral requirements.* Covered transactions between a bank and an affiliated export trading company in which a bank holding company has invested pursuant to this subpart are subject to the collateral requirements of section 23A of the Federal Reserve Act (12 U.S.C. 371c), except where a bank issues a letter of credit or advances funds to an affiliated export trading company solely to finance the purchase of goods for which:

(i) The export trading company has a bona fide contract for the subsequent sale of the goods; and

(ii) The bank has a security interest in the goods or in the proceeds from their sale at least equal in value to the letter of credit or the advance.

§ 211.34 Procedures for filing and processing notices.

(a) *Filing notice*—(1) *Prior notice of investment.* An eligible investor shall give the Board 60 days' prior written notice of any investment in an export trading company.

(2) *Subsequent notice*—(i) An eligible investor shall give the Board 60 days' prior written notice of changes in the activities of an export trading company that is a subsidiary of the investor if the export trading company expands its activities beyond those described in the initial notice to include:

(A) Taking title to goods where the export trading company does not have a firm order for the sale of those goods;

(B) Product research and design;

(C) Product modification; or

(D) Activities not specifically covered by the list of activities contained in section 4(c)(14)(F)(ii) of the BHC Act.

(ii) Such an expansion of activities shall be regarded as a proposed investment under this subpart.

(b) *Time period for Board action.* (1) A proposed investment that has not been disapproved by the Board may be made 60 days after the Reserve Bank accepts the notice for processing. A proposed investment may be made before the expiration of the 60-day period if the Board notifies the investor in writing of its intention not to disapprove the investment.

(2) The Board may extend the 60-day period for an additional 30 days if the Board determines that the investor has not furnished all necessary information or that any material information furnished is substantially inaccurate. The Board may disapprove an investment if the necessary information is provided within a time insufficient to allow the Board reasonably to consider the information received.

(3) Within three days of a decision to disapprove an investment, the Board shall notify the investor in writing and state the reasons for the disapproval.

(c) *Time period for investment.* An investment in an export trading company that has not been disapproved shall be made within one year from the date of the notice not to disapprove, unless the time period is extended by the Board or by the appropriate Reserve Bank.

(d) *Time period for calculating revenues.* For any export trading company that commenced operations two years or more prior to August 23, 1988, the four-year period within which to calculate revenues derived from its activities under § 211.32(a) of this part shall be deemed to have commenced with the beginning of the 1988 fiscal year for that export trading company. For all other export trading companies, the four-year period shall commence with the first fiscal year after the respective export trading company has been in operation for two years.

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

1. The authority citation for part 265 continues to read as follows:

Authority: Sec. 11(k), 38 Stat. 261 and 80 Stat. 1314 (12 U.S.C. 248(k)).

2. In § 265.2, paragraph (c)(38) is added to read as follows:

§ 265.2 Specific functions delegated to Board employees and to Federal Reserve Banks.

* * * * *

(c) * * *

(38) Under § 211.5(d)(4) of this chapter (Regulation K):

(i) To approve requests for authority to engage in the activities of underwriting, distributing, and dealing in shares outside the United States, provided that the Staff Director has determined that the internal procedures and operations of the organization and the effect of the proposed activities on capital adequacy are consistent with approval; and

(ii) To approve hedging methods authorized under § 211.5(d)(14)(iii)(A) of this chapter.

* * * * *

§ 265.2 [Amended]

3. In § 265.2, paragraphs (f)(46)(iii) and (46)(v) are removed; paragraphs (f)(46)(iv) and (46)(vi) are redesignated as (f)(46)(iii) and (46)(iv) respectively; and paragraph (f)(46)(ii) is revised, and paragraph (f)(53) is added, to read as follows:

* * * * *

(f) *Each Federal Reserve Bank* * * *

* * * * *

(46) * * *

(i) * * *

(ii) A bank holding company investor and its lead bank meet the minimum capital adequacy guidelines of the Board, the Comptroller of the Currency or the Federal Deposit Insurance Corporation or have enacted capital enhancement plans that have been determined by the appropriate supervisory authority to be acceptable;

* * * * *

(53) Under § 211.5(d)(17) of this chapter (Regulation K) to approve applications to engage in futures commission merchant activities on an exchange that requires members to guarantee or otherwise contract to cover

losses suffered by other members, provided that the Board has previously approved the exchange and the application is on the same terms and conditions on which the Board based its approval of the exchange.

* * * * *

Board of Governors of the Federal Reserve System, April 18, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-9672 Filed 4-26-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 69, 168, and 188

Removal of parts

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This document removes 32 CFR Part 69, "Department of Defense Dependent Schools (DoDDs)," Part 168, "Management and control of engineering and technical services, and part 188, "Development, use, marking and stocking of fallout shelters". These parts have served the purpose for which they were intended and are no longer required.

EFFECTIVE DATE: April 29, 1991.

FOR FURTHER INFORMATION CONTACT: L.M. Bynum, Directives Division, Washington Headquarters Services, Pentagon, Washington, DC 20301, telephone (703) 697-4111.

SUPPLEMENTARY INFORMATION:

List of Subjects

32 CFR Part 69

Elementary and secondary education; Government employees; Military personnel.

32 CFR Part 168

Armed forces; Government procurement.

32 CFR Part 188

Armed forces; Civil defense; Fallout shelters; Federal buildings and facilities; Radiation protection.

PARTS 69, 168, AND 188 [REMOVED]

Accordingly, under the authority of 10 U.S.C. 131, 32 CFR parts 69, 168, and 188 are removed.

Dated: April 24, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-10033 Filed 4-26-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 151

[CGD 90-054]

RIN 2115-AD64

Pollution-Prevention Requirements of Annex V of MARPOL 73/78

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the rules that carry out Annex V of the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78). This rule is necessary because on February 18, 1991, two amendments to the Annex became effective internationally. Like those amendments, this rule designates the North Sea as a Special Area under the Annex and eliminates the previous exemption under the Annex for the loss of synthetic material incidental to the repair of fishing nets.

EFFECTIVE DATE: This rule is effective on May 29, 1991.

FOR FURTHER INFORMATION CONTACT: Lieutenant James H. McDowell, Project Manager, Office of Marine Safety, Security, and Environmental Protection (G-MPS-3), (202) 267-0491, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Lieutenant James H. McDowell, Project Manager, Office of Marine Safety, Security, and Environmental Protection, and Mr. Patrick J. Murray, Project Counsel, Office of Chief Counsel.

Regulatory History

On January 9, 1991, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Pollution-Prevention Requirements of Annex V of MARPOL 73/78 in the Federal Register [56 FR 824]. The Coast Guard did not receive any letters commenting on the proposal. No public hearing was requested, and none was held.

Background and Purpose

The United States implements Annex V of MARPOL 73/78 through the Act to Prevent Pollution From Ships, as amended [33 U.S.C. 1901-1912] (the Act). The Act directs the Secretary of the Department in which the Coast Guard is operating to prescribe any necessary or desired regulations to carry out the provisions of MARPOL 73/78. On September 4, 1990, the Coast Guard published a final rule entitled Regulations Implementing the Pollution-Prevention Requirements of Annex V of MARPOL 73/78 in the Federal Register (55 FR 35986). With related rules, that rule carries out the Annex for foreign ships operating in U.S. waters and for U.S. ships operating in any waters. The several rules establish, for ships, requirements on garbage discharge and, for facilities, requirements on garbage reception.

On February 18, 1991, two amendments to Annex V became effective internationally. The International Maritime Organization (IMO) had adopted these amendments, and the U.S. delegation to IMO had fully participated in the deliberative process for the amendments. The amendments (1) designate the North Sea as a Special Area under the Annex, and (2) eliminate an exemption under the Annex for the loss of synthetic material incidental to the repair of fishing nets.

Annex V imposes more stringent restrictions on discharges into waters designated as Special Areas. This rule adds the North Sea to those waters designated as Special Areas under Annex V. Special Areas under Annex V now comprise (1) the Mediterranean Sea area, (2) the Baltic Sea area, (3) the Black Sea area, (4) the Red Sea area, (5) the Gulfs area, which includes parts of the Persian Gulf, and (6) the North Sea area.

Previously, the loss of synthetic material incidental to the repair of fishing nets did not violate Annex V if all reasonable precautions had been taken to prevent this loss. The elimination of the exemption for this loss will further reduce the amount of plastic and other synthetic materials entering the water. This will lessen the harmful effects of these materials on marine wildlife and will aid efforts to reduce the amount of debris that collects on the nation's shorelines and beaches.

The existing rules carry out Annex V as it stood until February 18, 1991. This rule conforms them to the Annex as the two amendments modify it.

Discussion of Comments and Amendments

The Coast Guard did not receive any letters commenting on the NPRM published on January 9, 1991, in the **Federal Register** (56 FR 824). No public hearing was requested, and none was held. This rule adopts the NPRM without substantive changes. This rule adds text to the prefatory language of 33 CFR 151.53, adds text in the form of a new paragraph (f), and adds text to Note 2 to appendix A to §§ 151.51 through 151.77; these added texts, respectively, list, define, and emphasize the North Sea as a Special Area under Annex V. This rule also deletes the text in § 151.77(c) exempting the loss of synthetic material incidental to the repair of fishing nets, though it does leave the text exempting the accidental loss of synthetic fishing nets themselves.

Regulatory Evaluation

The Coast Guard considers this rule not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures [44 FR 11040 (February 26, 1979)].

The Coast Guard prepared a Final Regulatory Evaluation for the final rule carrying out Annex V. A copy of this evaluation is available in the docket for inspection or copying at the office of the Marine Safety Council, U.S. Coast Guard Headquarters, room 3406, 2100 Second Street SW., Washington, DC 20593–0001. Office hours are between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. The Coast Guard expects the economic impact of this rule to be so minimal that a new Regulatory Evaluation is not necessary. This rule makes only minor changes to the rules previously evaluated and adopted. It affects only U.S.-flag ships operating in the North Sea, and those few fishing vessels losing synthetic material during the repair of fishing nets despite exercising all reasonable precautions.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Coast Guard must consider whether this rule would have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Again, the Coast Guard prepared a Final Regulatory Evaluation for the final rule carrying out Annex V. The Coast Guard conducted, as a part of this evaluation, a regulatory flexibility analysis, which certified that that rule would not have a significant economic impact on a substantial number of small entities. This rule makes only minor changes to that rule. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection-of-information requirements under the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*].

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that it does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this rule and has concluded that preparation of an Environmental Impact Statement is not necessary. The Coast Guard conducted an Environmental Assessment for the final rule carrying out Annex V; this led to a Finding of No Significant Impact. This rule makes only minor changes to that rule. The Environmental Assessment and Finding of No Significant Impact are available in the docket for inspection or copying at the address in the "Regulatory Evaluation" section of this preamble.

List of Subjects in 33 CFR Part 151

Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 151 as follows:

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE AND MUNICIPAL OR COMMERCIAL WASTE

1. The citation of authority for subpart A of part 151 is revised to read as follows:

Authority: 33 U.S.C. 1321(j)(1)(C) and 1903(b); E.O. 11735, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

2. Section 151.53 is amended by revising the introductory text and adding a new paragraph (f) before the note, to read as follows:

§ 151.53 Special areas for Annex V of MAROL 73/78.

For the purposes of §§ 151.51 through 151.77, the special areas are the Mediterranean Sea area, the Baltic Sea area, the Black Sea area, the Red Sea area, the Gulfs area, and the North Sea area, which are defined as follows:

* * * * *

(f) The North Sea area means the North Sea proper, including seas within the North Sea southwards of latitude 62° N and eastwards of longitude 4° W; the Skagerrak, the southern limit of which is determined east of the Skaw by latitude 57°44.8′ N; and the English Channel and its approaches eastwards of longitude 5° W. The discharge restrictions in § 151.71 are effective in the North Sea area on February 18, 1991.

* * * * *

3. Section 151.77 is amended by revising paragraph (c), to read as follows:

§ 151.77 Exceptions for emergencies.

* * * * *

(c) The accidental loss of synthetic fishing nets, provided all reasonable precautions have been taken to prevent such loss.

4. Appendix A to §§ 151.51 through 151.77 is amended by revising Note 2, to read as follows:

Appendix A to §§ 151.51 through 151.77—Summary of Garbage Discharge Restrictions.

* * * * *

Note 2: Special areas under Annex V are the Mediterranean, Baltic, Black, Red, and North Seas areas and the Gulfs area. (33 CFR 151.53)

* * * * *

Dated: April 2, 1991.

J. D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 91–9789 Filed 4–26–91; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AF04

Death Pension Eligibility—Wartime Service

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its

adjudication regulations concerning eligibility for death pension. This change is necessary because VA General Counsel has pointed out that those regulations do not clearly reflect the statutory requirement that the veteran's service must have been during a period of war. The intended effect of this change is to clarify the wartime service eligibility requirement for death pension benefits.

EFFECTIVE DATE: April 29, 1991.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: In a memorandum dated October 11, 1990, VA General Counsel held that 38 CFR 3.3(b)(3)(iii) and and 3.3(b)(4)(iii) do not clearly reflect the provisions of 38 U.S.C. 541 and 542; specifically, that the veteran's service must have been during a period of war. We are amending 38 CFR 3.3(b)(3) and 3.3(b)(4) to clarify this eligibility requirement. As a result of this amendment, the cross-reference contained in § 3.1(d)(2) is being amended.

VA is issuing a final rule to amend the provisions of 38 CFR 3.3(b)(3) and 3.3(b)(4). This change is necessary to clarify the regulatory provisions in accordance with the memorandum of VA General Counsel. Because this amendment does not constitute a substantive change, publication as a proposal for public notice and comment is unnecessary. For these reasons, this amendment is effective on April 29, 1991.

Since a notice of proposed rulemaking is unnecessary and will not be published, this amendment is not a "rule" as defined in and made subject to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601(2). In any case, this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the RFA, 5 U.S.C. 601-612. This amendment will not directly affect any small entity.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with Foreign-based enterprises in domestic or export markets.

(The Catalog of Federal Domestic Assistance program number is 64.105.)

List of Subjects in 38 CFR Part 3

Administrative practices and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: March 26, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

PART 3—[AMENDED]

38 CFR part 3, Adjudication, is amended as follows:

§ 3.1 [Amended]

1. In § 3.1(d)(2), remove the words "(See § 3.3(b)(4)(iii))" and add, in their place, the words "(See §§ 3.3(b)(3)(i) and 3.3(b)(4)(i))". The authority citation for this paragraph is revised as follows:

(Authority: 38 U.S.C. 210(c)).

2. In § 3.3, paragraphs (b) (3) and (4) are revised to read as follows:

§ 3.3 Pension.

* * * * *

(b) * * *

(3) *Section 306 death pension.* A monthly benefit payable by the Department of Veterans Affairs to a surviving spouse or child because of a veteran's nonservice-connected death. Basic entitlement exists if:

(i) The veteran (as defined in § 3.1(d) and (d)(2)) had qualifying service as specified in paragraph (a)(2)(i), (ii), or (iii) of this section; or

(ii) The veteran was, at time of death, receiving or entitled to receiver compensation or retired pay for service-connected disability based on wartime service; and

(iii) The surviving spouse or child (A) was in receipt of section 306 pension on December 31, 1978, or (B) had a claim for pension pending on that date, or (C) filed a claim for pension after that date but within 1 year after the veteran's death, if the veteran died before January 1, 1979; and

(iv) The surviving spouse or child meets the income and net worth requirements of 38 U.S.C. 541, 542 or 543 as in effect on December 31, 1978, and all other provisions of title 38, United States Code in effect on December 31, 1978, applicable to section 306 pension.

Note: The pension provisions of title 38, United States Code, as in effect on December 31, 1978, are available in any VA regional office.)

(4) *Improved death pension, Public Law 95-588.* A benefit payable by the Department of Veterans Affairs to a veteran's surviving spouse or child because of the veteran's nonservice-connected death. Payments are made monthly unless the amount of the annual benefit is less than 4 percent of the maximum annual rate payable to a veteran under 38 U.S.C. 521(b), in which case payments may be made less frequently than monthly. Basic entitlement exists if:

(i) The veteran (as defined in § 3.1(d) and (d)(2)) had qualifying service as specified in paragraph (a)(3)(i), (ii), (iii), or (iv) of this section (38 U.S.C. 541(a)); or

(ii) The veteran was, at time of death, receiving or entitled to receive compensation or retired pay for a service-connected disability based on service during a period of war. (The qualifying periods of war are specified in paragraph (a)(3) of this section.) (38 U.S.C. 541(a)); and

(iii) The surviving spouse or child meets the net worth requirements of § 3.274 and has an annual income not in excess of the applicable maximum annual pension rate specified in §§ 3.23 and 3.24.

(Authority: 38 U.S.C. 541 and 542).

* * * * *

[FR Doc. 91-10036 Filed 4-26-91; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3951-4]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a final exclusion from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 for specified wastes to be generated by USX Corporation, Chicago, Illinois. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 265 and 268 of title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators

the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: April 29, 1991.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW., room M-2427, Washington, DC 20460, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The reference number for this docket is "F-89-UXFP-FFFFF." The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Chichang Chen, Office of Solid Waste (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-7392.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine that (1) the waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) that no other hazardous constituents are present in the wastes at levels of regulatory concern.

B. History of this Rulemaking

USX Corporation (USX), located in Chicago, Illinois, petitioned the Agency to exclude from hazardous waste control a specific waste it intends to generate. After evaluating the petition, on July 20, 1989, EPA proposed to exclude USX's waste from the lists of hazardous waste under 40 CFR 261.31 and 261.32, conditional upon USX meeting certain sampling, analysis, and reporting requirements. (See 53 FR 30406).

USX petitioned the Agency for an "upfront" exclusion. A petitioner requests an upfront exclusion for wastes that have not yet been generated or that will be subject to further treatment. When treatment is planned, an upfront delisting petition requests that an exclusion be granted based on untreated waste characteristics, full-scale or pilot-scale treatment data if available, and process descriptions. As a condition of an upfront exclusion, the Agency may impose batch testing requirements, which often include analytical testing of representative samples obtained from the full-scale system. These data can be used to verify that the treatment system, once on-line, is operating as described in the petition. The Agency may also specify verification testing limitations (*i.e.*, the maximum allowable levels of hazardous constituents of concern in the waste) in the conditions of the granted exclusion. When the actual levels of the constituents of concern are below these levels, the waste will not be considered hazardous. If the actual levels of the constituents are above these levels, the waste is still considered to be hazardous and must be retreated or disposed in accordance with RCRA subtitle C requirements.

This rulemaking addresses public comments received on the proposal and finalizes the proposed exclusion.

II. Disposition of Petition

USX Corporation, Chicago, Illinois

1. Proposed Exclusion

USX petitioned the Agency for an upfront exclusion of its chemically stabilized electric arc furnace dust (CSEAFD), presently listed as EPA Hazardous Waste No. K061. USX based its petition on the claim that the constituents of concern, although present in the waste, were in an essentially immobile form (*i.e.*, cement-like). Furthermore, to support its claim that both the non-listed and listed constituents of concern would not be present in the fully-cured CSEAFD above health-based levels of concern, USX submitted results from total constituent, EP toxicity, and multiple extraction procedure (MEP) analyses (used to assess stabilized wastes) for all the EP toxic metals, nickel, cyanide, antimony, beryllium, and thallium. USX did not submit results from MEP analyses for barium and cyanide. (See 54 FR 30410, July 20, 1989). The total constituents analyses were performed on representative samples of the untreated electric arc furnace dust. The EP and MEP leachate analyses were performed on representative samples of the fully-cured CSEAFD as generated using a laboratory-scale treatment system. The verification testing conditions attached to the exclusion are designed to ensure that these constituents will not be present in the fully-cured CSEAFD at concentrations above the health-based levels used in delisting decision-making. See 54 FR 30406, July 20, 1989 for a more detailed explanation of why EPA proposed to grant USX's petition for its fully-cured CSEAFD.

2. Agency Response to Public Comments

The Agency received public comments on the proposed rule from one commenter. The commenter opposed the Agency's proposed decision to exclude the fully-cured CSEAFD. The objections raised by the commenter are discussed below.

Petition-Specific Comments

The commenter believed that the Agency did not provide sufficient information on the particle size and physical nature (including pH) of both the intermediate and final waste forms. The commenter asserted that this information was needed to evaluate the potential for waste dispersal and exposure by routes in addition to leaching. The commenter, therefore, believed that their ability to provide "meaningful" public comment was seriously restricted.

The agency disagrees with the commenter. First, USX provided adequate data characterizing the physical and chemical composition of both the untreated waste and the CSEAFD. These data were provided in the exclusion petition. (See 54 FR 30406, July 20, 1989). With regards to information concerning the pH of the CSEAFD, although this information was not specifically provided in the **Federal Register** notice, the notice stated that the CSEAFD did not exhibit the characteristic of corrosivity. (See 54 FR 30411, July 20, 1989). The fully-cured CSEAFD is a solid material, therefore, the pH cannot be directly measured. However, the petition did contain pH measurements on mixtures of the waste and distilled water. USX provided pH data on four concentrated samples of fully-cured CSEAFD suspended in water and all four samples had a pH of 12.3.

In regards to information concerning particle size, the proposed rule stated that USX's waste possessed a rigid, friable texture similar to that of a clay soil. (See 54 FR 30409, July 20, 1989). The Agency believes that this information is sufficient to perform a worst-case evaluation because relative particle size can be inferred based on the physical description of the waste. In regards to information concerning the intermediate form of the CSEAFD, the Agency did not evaluate the intermediate form because the exclusion only covers the final, fully-cured CSEAFD. (The Agency notes that the intermediate waste (*i.e.*, uncurred CSEAFD) is still a hazardous waste subject to all of the information

submitted by USX. Information that was not claimed to be confidential is available in the RCRA public docket for public inspection.

The commenter stated that the CSEAFD still exhibits one of the criteria for which it was listed—the presence of significant concentrations of the inorganic constituents of concern (*i.e.*, cadmium, chromium, and lead). The commenter also stated that the waste contains significant concentrations of nickel. The commenter, therefore, believed that the petition should be denied because USX did not meet the regulatory requirements of 40 CFR 261.11(a)(3)(ii) and (vii). Specifically, the commenter asserted that because the waste contains significant concentrations of both the listed and non-listed constituents (*i.e.*, cadmium, chromium, lead, and nickel), the petitioner must make a demonstration showing that the petitioned waste, under all plausible types of mismanagement scenarios, is non-hazardous.

First, the Agency considered in its analysis of the petitioned waste all of the factors listed in 40 CFR 261.11(a)(3), including all plausible mismanagement scenarios (see 54 FR 30407, July 20, 1989). EPA, therefore, disagrees with the commenter's assertion that granting this petition would be inconsistent with the regulations.

In regards to the presence of the cadmium, chromium, lead, and nickel in the petitioned waste, the Agency agrees that the presence in K061 wastes of significant total constituent concentrations of the inorganic constituents of concern was one of the criteria for listing K061 wastes as "T" (toxic) wastes. See 40 CFR 261.11(a)(3)(ii) and "Background Document, Resource Conservation and Recovery Act, subtitle C, Hazardous Waste Management, section 3001, Identification and Listing of Hazardous Waste," 1980. The Agency also believes that the data presented in the Background Document broadly characterize the physical/chemical nature of untreated electric arc furnace dusts and that these data are not representative of the physical/chemical nature of USX's stabilized electric arc furnace. EPA, therefore, uses elevated concentrations of constituents as an indicator of potential hazard as it is reasonable to expect that as the concentration of an unbound or loosely bound etal present in a waste increases, the potential for the metal to leach from the waste also increases. (Generally, the higher the total concentrations of an unbound or loosely bound metal, the higher the potential EP leachate concentrations.) Thus, wastes having significant concentrations of unbound or loosely bound metals are more likely to impact the underlying ground water than wastes having lower concentrations of unbound or loosely bound metals are more likely to impact the underlying ground water than wastes having lower concentrations of unbound or loosely bound metals. In this specific case, the metals in USX's waste are tightly bound within the waste matrix. The Agency's conclusion that all of the inorganic constituents (including, cadmium, chromium, lead, and nickel) are bound in the waste matrix and thus are not available for leaching is supported by the results of both the EP and MEP leachate analyses, which showed that the inorganic constituents would not leach at hazardous levels from USX's waste under conditions similar to those found in municipal waste landfills. (See 54 FR 30411, July 20, 1989). As a result, the Agency believes that the total levels of cadmium, chromium, lead and nickel present in USX's waste, in this specific case, are not an appropriate indicator of hazard to human health and the environment.

Furthermore, EPA evaluated the waste's potential impact on human health using either the maximum EP or MEP leachate concentration (whichever was greater) and the vertical and horizontal spread (VHS) model. For the volume of waste generated by USX (35,000 tons/year), the VHS model predicts a dilution factor of approximately 6.3. The VHS model analysis provides a conservative and reasonable worst-case evaluation of the behavior of the leachate from the waste in an underlying aquifer. The predicted compliance-point concentrations resulting from this conservative analysis were below the levels of concern used for delisting purposes. See 54 FR 30411, July 20, 1989 for a description of the modeling analysis of USX's waste.

As indicated above, the commenter believed that the Agency failed to consider all plausible mismanagement scenarios in its evaluation of the petitioned waste. Specifically, the commenter asserted that because the Agency based its evaluation exclusively on the "worst-case scenario" of land disposal, the proposed rule provides no basis for determining if the waste would be hazardous under other plausible mismanagement scenarios. The commenter, therefore, believed that EPA only considered the leachable levels of hazardous constituents and did not consider the waterborne dispersal, airborne dispersal, or direct dermal contact with the waste potentially occurring through other plausible mismanagement scenarios.

The Agency does not believe that it is likely for other mismanagement scenarios to occur. With regard to possible airborne dispersal, the Agency believes that the commenter's concerns regarding airborne dispersal of the waste are unfounded. First, the Agency notes that USX's untreated the uncured wastes will continue to be regulated as hazardous wastes. Therefore, the regulatory requirements under RCRA for transport and storage will provide some control of any releases of either the untreated or uncured wastes to the atmosphere. With regard to USX's fully-cured CSEAFD, USX must either dispose of their fully-cured CSEAFD waste on-site or ensure that the fully-cured CSEAFD waste is delivered to an off-site storage, treatment or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. (See 54 FR 30413, July 20, 1989).

While the commenter is correct in noting that the listing background document characterized K061 wastes as being fine particles of dust, the CSEAFD produced by USX is not a fine "dust," but rather has a texture of a clay soil. Therefore, EPA does not believe that airborne exposure to hazardous contaminants from USX's fully-cured CSEAFD is likely to present a hazard to human health or the environment due to its physical form. However, in order to fully respond to the specific comment, the Agency evaluated the hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents from USX's fully-cured CSEAFD. Specifically, EPA used the methodology documented in "Rapid Assessment of Exposure to Particulate Emissions from Surface Contamination sites," U.S. Environmental Protection Agency, Office of Health and Environmental Assessment, EPA/600/8-85/002, February 1985, to estimate respirable particulate emissions from wind erosion of surfaces with an "unlimited reservoir" of erodible particles. The worst-case emission rate derived from this methodology then was input to the Agency's Ambient Air Dispersion Model (AADM), a steady-state, Gaussian plume dispersion model to predict the concentrations of the inorganic constituents 1000 feet downwind of the facility. For a complete description and discussion of the AADM, see 50 FR 48963, November 27, 1985.

In this specific analysis, the Agency assumed conservative values for all variables likely to influence the

potential for soil erosion including wind velocity and vegetation. The Agency, however, modified the assumptions regarding unit dimensions used in the AADM to more closely resemble a landfill (*i.e.*, unit depth was changed from one foot to eight feet as used in the VHS model). The results of this conservative, worst-case analysis indicated that no substantial present or potential hazard to human health or the environment from airborne exposure to both the listed and non-listed inorganic constituents from USX's fully-cured CSEAFD is likely. For a complete description of the Agency's modeling and analysis of air emissions from USX's fully-cured CSEAFD see "Docket Report on Evaluation of Air Emissions resulting from USX Corporation's Fully-Cured CSEAFD," October 16, 1989 (located in the docket for this rule).

With regard to waterborne dispersal of the waste, it is again important to note that USX's waste will be stabilized and handled as hazardous until it is fully-cured. With regard to waterborne dispersal of the fully-cured CSEAFD, it is important to note that the VHS model analysis described in the proposal shows that leachate from the waste that travels through ground water will not exceed health-based levels. The Agency acknowledges that it may also be possible for surface water runoff to transport contaminants from the waste to a nearby surface water body. However, the Agency does not believe that analysis of such overland transport of contaminants as a reasonable exposure route for the petitioned waste would compel a different result for this petition. As described in the proposed rule, the Agency believes that landfill disposal is a reasonable worst-case management scenario for USX's fully-cured CSEAFD. Contamination of surface water might occur, therefore, through runoff from the petitioned waste. However, EPA believes that the concentrations of any hazardous constituents in that runoff will tend to be lower than the levels in either the EP or MEP leachate analyses reported in the proposal, due to the acidic medium of the EP and MEP tests. Furthermore, any transported constituents would be further diluted in the surface water body.

Finally, the Agency believes that, in general, the leachate derived from this waste will not directly enter a surface water body without first travelling through the saturated (subsurface) zone where dilution and attenuation of hazardous constituents may occur. The VHS model takes this saturated zone into account as it predicts the ultimate fate and transport of hazardous constituents.

The commenter believed that the Agency did not consider the potential toxicity of USX's CSEAFD with regard to dioxin content. The commenter based its concern of the possibility of dioxin contamination on data obtained through the Agency's National Dioxin Study, Tier 4 Combustion Report. (See "National Dioxin Study Tier 4 Combustion Sources: Engineering Analysis Report," U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, EPA–450/4–84–014h, September, 1987.)

The Agency disagrees with the commenter. EPA evaluated USX's petition and did not believe that any other hazardous constituents, including dioxins, were present in USX's waste. In response to the commenter's specific concern regarding the possibility of dioxin contamination, EPA reviewed the Tier 4 report cited by the commenter. Although data presented in the Tier 4 report indicated that dioxins were present in wastes generated by secondary copper smelters and wire reclamation incinerators, the Agency considers it highly unlikely for dioxins to be present in USX's waste. As discussed in the Tier 4 report, the principal reasons for the possible presence of dioxins in wastes generated by secondary copper smelters and wire reclamation incinerators are the presence of dioxin-forming precursors in raw materials and low combustion temperatures.

Specifically, the report noted that secondary copper smelters' raw materials can contain quantities of polyvinyl chloride wire insulation (telephone wire), electrical parts, and other sources of copper (including circuit boards and electrical switches). Wire reclamation incinerators can process polyvinyl chloride wire insulation and polychlorinated biphenyls (PCBs)-containing transformer cores and parts. These types of raw materials contain dioxin-forming precursors.

The report also found that combustion temperatures maintained by both secondary copper smelters and wire reclamation incinerators are low enough to promote to formation of dioxins. Surveyed secondary copper smelting furnaces operated at approximately 1500 °F, and wire reclamation incinerators operated at approximately 1000 °F (some had afterburners operating at 1900 °F).

The Agency reviewed the list of scrap materials USX reported it uses to charge its furnaces and notes that USX's scrap materials do not consist of coated wiring, electronic scrap, or other materials containing dioxin-forming precursors. The Tier 4 report states that secondary copper smelters and wire reclamation incinerators are less likely to generate dioxin-containing wastes if they do not use polyvinyl coated wire and low combustion temperatures. In addition, the Tier 4 report stated that dioxins generally are destroyed at temperatures above 800 °C (1472 °F), especially in incinerators with residence times of 1.5–2.0 seconds or more. USX's furnaces heat molten steel to 3000 °F. Therefore, USX's furnaces run at more than twice the temperature required to destroy polychlorinated dibenzo-p-dioxins (PCDDs), PCBs, and polychlorinated dibenzofurans (PCDFs). EPA, based on the above discussion, does not believe that it is reasonable to expect dioxins to be present in USX's waste.

EPA's Modeling Approach

The commenter believed that the VHS model understates the health and environmental risks of disposal of USX's waste following delisting for the reasons discussed below.

First, the commenter asserted that USX's waste alone contributes amounts of cadmium, chromium (total and hexavalent), lead, and selenium that are substantial percentages of the regulatory levels of concern (*i.e.*, the predicted compliance-point concentrations for cadmium, chromium (total and hexavalent), lead, and selenium are close to their respective regulatory levels of concern). The commenter, therefore, stated that disposing of this waste with any other contaminant source within the same landfill could readily cause exceedences of the regulatory levels of concern.

The Agency believes that the commenter is implying that wastes should not be delisted unless the predicted at-the-well concentrations of the contaminants are significantly less than their respective regulatory levels of concern (*i.e.*, some unspecified percentage reduction of the regulatory level of concern) in order to safeguard against the impact of other potential contamination sources. The Agency is not able to modify the VHS model to assess the effects of additional contaminant sources on the underlying aquifer within the same disposal site. The Agency, therefore, does not have any technical basis to support a determination of an appropriate percentage reduction and believes that some stipulated percentge reduction would be arbitrary. In light of the conservative nature of the VHS model

(*e.g.*, no degradation, infinite source), EPA will continue to allow wastes to exhibit compliance-point concentrations up to 100 percent of the regulatory levels of concern.

Second, the commenter was also troubled by the compliance-point concentration for both lead and cadmium since EPA is considering lowering the drinking water standard for both constituents to 0.005 mg/l. The commenter believes that the waste should be considered hazardous since, if the 0.005 mg/l standard for both these constituents is adopted, the calculated compliance-point concentration for lead would exceed the standard by a factor of three-fold and the calculated compliance-point concentration for cadmium would be approximately two-thirds of the new standard.

In making delisting decisions, the Agency uses the existing health-based levels cited in "Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions," November 1989 (located in the RCRA public docket). EPA has no way of predicting the final drinking water standards until they are actually promulgated (the standards could be less than or greater than the proposed level or the 0.005 mg/1 level cited by the commenter). Neither can the Agency be certain exactly when the new standards might be promulgated. Without new final drinking water standards, the Agency does not believe it is fair to the petitioner to postpone a final rulemaking until new drinking water standard for both lead and cadmium are promulgated.

Third, the commenter was further troubled with the predicted compliance-point concentration for lead because the commenter believed that USX's MEP leachate data indicated that "lead continued to leach appreciably throughout all nine iterations of the MEP, with no significant decrease even in the ninth round relative to the first extractions." The commenter asserted that USX failed to adhere to the MEP analytical method (SW–846 Method Number 1320) because the analyses were not contained until the MEP concentration decreased relative to concentrations detected on day seven or eight. See "Test Methods of Evaluating Solid Waste: Physical/Chemical Methods," U.S. EPA Office of Solid Waste and Emergency Response, Publication SW–846 (third edition), November 1986. The commenter, therefore, believed that because it was unclear whether the lead leaching would continue or even increase with additional rounds of extraction, they had no confidence in EPA's conclusion that the "fully-cured CSEAFD treatment residue exhibits long-term stability."

The commenter's concern regarding the day nine MEP concentration was also motivated by the results cited in a column leaching study performed on municipal solid waste incinerator residues stabilized using only Portland Cement (Type II).[1] The study indicated initially very low leachability of lead, followed by a sharp increase. The authors concluded that the leaching was attributed to both the amphoteric nature of lead (*i.e.*, the ability of lead to become solubilized under either acidic or basic conditions) and the presence of organic material in the incinerator residue. The commenter also cited a previous notice where the Agency indicated that the addition of portland cement to a pesticide manufacturing residue (EPA Hazardous Waste number K031) actually increased the leachability of arsenic (another amphoteric metal). (See 54 FR 1101, January 11, 1989).

The Agency believes that the results from the above studies are not applicable to USX's CSEAFD and provide no evidence that lead or arsenic will leach from USX's CSEAFD. First, the USX EAF dust is a different matrix than municipal incinerator residue and pesticide residue. USX's waste does not contain organic material or elevated concentrations of arsenic (*i.e.*, K031 wastes can have levels of arsenic in excess of one percent). USX's process (*i.e.*, the "CHEMFIX" process) also relies on several additives in addition to portland cement (Type I). In addition, the leachate concentrations obtained from the MEP analyses of the four CSEAFD samples were all lower than the initial leachate level obtained in the study by Holland, et al. (1989).

Furthermore, the Agency notes that it is difficult to draw comparisons between the data obtained from the column leaching test and the data obtained from the MEP leachate tests due to significant differences in analytical procedures and assumptions regarding leachate generation. Specifically, the data obtained from the column leaching test was generated by continuously leaching 36.1 kg of crushed solidified incinerator residue having a particle size of less than one-half inch in a 60 inch (height) × 10 inch (diameter) column. The data obtained from the MEP leachate tests were generated by nine days of successive leaching of 0.1 kg of ground CSEAFD having a particle size of less than 9.5 mm (<0.37 inches). Additionally, the column leaching test utilized a liquid to solids (L/S) ratio of 0.6 while each day of the MEP test utilized a L/S ratio of 20. The Agency, therefore, is unable to compare the results obtained from two very different leaching procedures.

In regards to the analytical data characterizing USX's CSEAFD, the Agency believes that the Table summarizing the *maximum* MEP levels (from all four MEP analyses) presented in the proposed notice may have misled the commenter to conclude that USX's stabilization process was ineffective. (See Table 4, 54 FR 30410, July 20, 1989). Data from all four MEP analyses for lead are presented in Table 1.

[1] Holland, P.J., et al., "Evaluation of Leachate Properties and Assessment of Heavy Metal Immobilization from Cement and Lime Amended Incinerator Residues," *Proceedings of the International Conference on Municipal Waste Combustion*, sponsored by U.S. EPA and Environment Canada, held April 11–14, 1989 in Hollywood, Florida, Vol. 1, Pages 4B–25–4B–43.

TABLE 1.—MEP LEACHATE CONCENTRATIONS—LEAD FULLY-CURED CSEAFD (MG/L)

Sample dates	Days/Concentrations								
	1	2	3	4	5	6	7	8	9
7/13	0.007	0.005	<0.023	<0.005	<0.005	<0.005	<0.005	<0.005	<0.005
7/16	<0.005	0.007	<0.005	<0.005	<0.005	<0.005	<0.005	<0.005	<0.005
11/3	0.025	0.095	0.020	<0.005	0.009	0.026	0.022	0.034	0.046
11/11	0.009	0.031	0.011	0.095	0.024	0.037	0.018	0.046	0.013

<: Denotes that the constituent was not detected at the detection limit specified in the Table.

As indicated by the MEP data presented in Table 1, the MEP concentration of lead obtained from the ninth extraction was either nondetect or lower than the MEP levels obtained on day seven or eight for all but one of the four analyses. The Agency, therefore, concluded that the CSEAFD exhibited long-term stability when subjected to an aggressive analytical procedure (which included grinding the sample to pass through a 100X mesh screen and successive extractions with an acidic solution (pH 3)). The commenter is correct in noting that for one sample (11/3), the day nine extraction concentration exceeded the level demonstrated on day seven. However, based on data from the other three tests, the Agency believes that the MEP concentration of lead is not of concern.

The data do not suggest, as the commenter asserted, that "lead continued to leach appreciably throughout all nine iterations of the MEP. * * *" EPA notes that the data did exhibit minor fluctuations, which in part, resulted from analytical variation. The Agency also notes that the MEP test is an extremely aggressive test which is used to provide additional information to support the results obtained from the standard EP test. The observed concentrations of lead never approached the maximum allowable concentration of 0.315 mg/l (back-calculated using the dilution factor obtained from the VHS model and the health-based level for lead: 6.3×0.05 mg/l = 0.315 mg/l). The Agency, therefore, is not concerned with the minor fluctuations exhibited by the data.

Fourth, the commenter believes that the Agency's assumption of 500 feet as the distance from the facility boundary to the nearest downgradient drinking water well underestimates potential ground-water contamination because 24 percent of the original 38 state agencies interviewed reported that drinking water wells were located within 500 feet of landfills. (See 50 FR 7898, February 26, 1985). The commenter reasoned that the Agency's use of the 76th percentile (500 feet) as a reasonable worst-case distance could mean that the VHS would underestimate potential ground-water contamination at up to 1,500 sites nationwide (*i.e.*, 1,500 sites represents approximately 24 percent of the over 6,000 existing municipal solid waste landfills). Lastly, the commenter cited data on actual distances to drinking water wells collected by EPA and used in proposing revisions to the federal criteria for municipal solid waste landfills. These nationwide data indicate a median distance from landfill to the nearest drinking water well as approximately 1,370 feet. The commenter also stated that two states had a median distance of 1,000 feet and that one state had a median distance of 797 feet.

The Agency believes that the commenter has neither provided adequate data or methodology to calculate an improved distance from facility boundary to the nearest drinking-water well. As noted by the commenter, the median nationwide distance from the unit boundary to the nearest drinking-water well is 1,370 feet, which is nearly three-times greater than the current assumption of 500 feet. The Agency notes that the survey from which the 500 foot distance (and the 24 percent of wells located within 500 feet) was limited since the results usually were only best estimates and the values reported frequently were given as a range. (See 50 FR 7896, February 26, 1985). The Agency, more importantly, also believes that it is unnecessary to calculate an improved distance from facility boundary to the nearest drinking-water well because of the conservative assumptions regarding well placement. Specifically, the model assumes that the drinking-water well is in the exact position to receive the highest concentration of the contaminant (*i.e.*, the bottom of the well is just at the top of the aquifer and the well is exactly in line with the disposal facility and the ground water flow). (See 50 FR 7896, February 26, 1985). Furthermore, the model does not consider finite sources, attenuation, hydrolysis, adsorption, precipitation, or any other chemical/physical processes that will reduce the concentration of the contaminants. To construct a reasonable worst-case model, it is unreasonable to use only absolute worst-case assumptions because the assumptions will compound such that the overall model will be unreasonable. The Agency, therefore, believes that the VHS model has a number of conservative assumptions which, when used with the selection of 500 feet as the distance from facility boundary to the nearest downgradient drinking-water well, will provide results that are protective of human health and the environment.

Fifth, the commenter believed that the VHS model was incapable of predicting the behavior of even modest volumes of waste disposed over time (*i.e.*, petitioned wastes in excess of 2,000 cubic yards disposed of every year over the course of a landfill's useful operating life). The Agency addressed these comments in a recent notice finalizing another exclusion. (See 54 FR 34178–34179, August 18, 1989). The commenter reviewed the responses made in the August 18, 1989 notice, but still considers the VHS model to be incapable of predicting the behavior of petitioned wastes in excess of 2,000 cubic yards disposed of every year over the course of a landfill's useful operating life.

The Agency continues to maintain that the VHS model performs a reasonable, worst-case analysis and provides dilution factors for waste volumes in excess of 2,000 cubic yards that are fully protective of human health and the environment. Based on the quantity of waste to be disposed of, the VHS model calculates a dilution factor ranging between 6.3 and 32.3. (See 50 FR 48886, 48899, November 27, 1985). (The maximum and minimum dilution factors occur at waste volumes of less than, or equal to 475 cubic yards and equal to, or greater than 8,000 cubic yards, respectively.) We note that for a waste volume of 2,000 cubic yards, the VHS model predicts a dilution factor of 8.98 and for USX's waste volume (34,500 cubic yards), the VHS model predicts a dilution factor of 6.3.

The Agency also maintains that, while the predicted dilution factor remains constant after the waste volume increases above 8,000 cubic yards, the VHS model does not have an "upper limit" as the commenter infers. Rather, the assumptions made in the VHS model regarding the dimensions of the disposal unit prevent the predicted dilution factor from falling below 6.3. For a discussion of the assumptions made in the disposal unit dimensions for the VHS model, See 53 FR 48900, November 27, 1985.

The Agency continues to maintain that it is unrealistic to modify the VHS model to account for cumulative volumes (*i.e.*, multiple years of waste disposed of at the same landfill cell). Specifically, large volumes of waste generally result from continuously operating processes; therefore, the waste is periodically disposed of and, as such, is distributed throughout the entire landfill, as the landfill is filled (see below). The Agency believes that periodic disposal of a continuously generated waste over the course of time (*e.g.*, ten years) would likely increase mixing (*i.e.*, dilution) of the petitioned waste with other non-hazardous wastes and fill material (*e.g.*, native soils) at the Subtitle D landfill. Subsequently, due to this long-term mixing, the waste's effect on the underlying aquifer would be reduced. The Agency also believes the VHS model's assumption that the entire annual waste volume is disposed of in the same landfill cell is a reasonable

worst case and is protective of human health and the environment. The Agency, however, will continue to use the total volume when the petitioner is attempting to obtain a "one-time" delisting for waste no longer generated.

Sixth, the commenter claims that the VHS model is incapable of evaluating large volumes of wastes disposed in several trenches because of EPS's assumptions that different cells overlie different aquifers, that cells only leach for one year, that a typical municipal landfill uses more than one cell annually, and that municipal landfills are lined.

The Agency considers the commenter's claims that EPA assumes that different cells overlie different aquifers and that cells only leach for one year to be incorrect. The Agency does not assume that different cells overlie different aquifers. In fact, the Agency assumes that all of the leachate enters the aquifer (without dilution by other municipal wastes and fill material in the unsaturated zone) and is then directly intersected at the downgradient compliance point. Furthermore, the conservative assumptions incorporated into the VHS model make the Agency's evaluation of successive trenches, leaching at different rates (rates which in time would approach zero in order to conserve mass) unnecessary because the Agency is being more conservative by assuming that the waste will leach at the maximum rate throughout time. Specifically, the VHS model incorporates the following conservative assumptions: infinite source (*i.e.*, the waste leaches at the maximum observed leachate concentration indefinitely, ignoring mass-balance relationships), no degradation or retardation of contaminant transport, 100 percent of the leachate enters the aquifer, there is no liner or leachate collection system, and that the compliance-point well directly intersects the contaminated ground-water plume.

Lastly, it is common engineering practice for typical municipal landfill operations to involve the use of successive lifts or cells which are covered daily with clean fill.[2] Specifically, wastes are placed in a lift (or cell), compacted, and covered with clean fill daily. Successive lifts are placed next to each other and then on top of one another until the final grade of the landfill is reached. Therefore, it is not unreasonable for EPA to assume that wastes disposed of throughout the entire year will be placed in cells with other wastes and clean fill material, and that the location of these cells will change as the landfill manages its operation. Finally, the Agency did not assume, as the commenter suggested, that municipal waste landfills are lined. On the contrary, EPA makes the reasonable worst case assumption that no engineered barriers are in place. Therefore, the Agency continues to maintain that the VHS model performs a reasonable, conservative analysis and provides dilution factors that are fully protective of human health and the environment.

Seventh, the commenter stated that the Agency did not restrict the coverage of the exclusion to a specific amount of waste. The commenter noted that, although the preamble specified that the proposed exclusion would apply only to the processes covered by the original demonstration, USX is not prevented from increasing its waste generation. (See 54 FR 30413, July 20, 1989).

In order to clarify the scope of the exclusion, the Agency has decided to modify the final rule to include a limitation on the waste generation rate. The Agency does not believe that the petitoner will be adversely affected by such a limitation because, as noted in the preamble to the proposed rule: (1) The petitioner provided (and certified as correct) an accurate estimate of the maximum annual waste generation rate, and (2) the exclusion is only valid for the maximum annual waste volume certified in the petition. The Agency, therefore, has modified the final rule to include the certified generation rate (35,000 tons) as an upper limit on the exclusion.

Conditional Testing and Reporting Requirements

The commenter stated that if the Agency granted USX an exclusion, the conditional requirements of the exclusion should include analyses for total constituent concentrations and MEP constituent concentrations of the hazardous constituents.

The Agency disagrees with the commenter. The Agency believes that the reasonable worst-case disposal scenario for this waste will be disposal in a municipal landfill, where soil conditions would be mildly acidic. EPA believes that the EP extraction procedure is the appropriate analytical tool to evaluate the potential leachability of this waste in an acidic environment. For this waste, EPA believes that continued evaluation of the EP leachable concentrations as required by the conditions of this exclusion will be adequate to protect human health and the environment. Furthermore, the Agency does not have health-based standards regulating the total constituent concentrations of any of the EP toxic metals (now TC metals) or nickel. To require USX to continually monitor for the total constituent concentrations of all the EP toxic metals and nickel will not ensure further protection of human health or the environment in a meaningful manner.

Lastly, the Agency does not believe it is necessary to require USX to perform continuous MEP analyses. First, the Agency's belief that the stabilization process is effective is substantiated by the analytical data obtained from the previous MEP leachate tests. Additionally, if the stabilization process were ineffective and an increase in the leachability of the hazardous constituents from the waste were to occur, the Agency believes that the EP (now replaced by the TCLP) leachate analyses would measure such an increase.

Inconsistencies Between the Delisting Program and the Land Disposal Restrictions Program

The commenter believed that the Agency's decision to exclude USX's waste was inconsistent with the Land Disposal Prohibition Provisions of the 1984 HSWA amendments. Specifically, the commenter stated that the proposed "delisting levels" (*i.e.*, the maximum allowable EP leachate concentrations) for lead and nickel exceed the Agency's promulgated best demonstrated available technology (BDAT) treatment levels for lead and nickel in K061 wastes (see 54 FR 30406, July 20, 1989, and 53 FR 31164, August 17, 1988, respectively).

The Agency agrees with the commenter that there are differences in approach between some of the decision criteria used in individual delisting decisions and those used in the Land Disposal Restrictions Program (LDRP). However, these differences are appropriate given the separate functions of the two programs and their different regulatory coverage. The Delisting Program and the LDRP are fundamentally different in that the Delisting Program's standards are health-based and the LDRP's treatment standards are technology-based. See RCRA section 3001 (42 U.S.C. 6921) and RCRA section 3004(M) (42 U.S.C. 6924(m)), respectively. The Agency, however, believes that both the health-based and technology-based approaches of the Delisting Program and the LDRP, respectively, are protective of human health and the environment.

[2] Tchobanoglous, George, "Solid Wastes: Engineering Principals and Management Issues," McGraw-Hill Series in Water Resources and Engineering, McGraw-Hill Publishing, Co., Copyright 1977, pages 316–325.

3. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the CSEAFD, when subject to the verification testing requirements specified in the exclusion, should be excluded from hazardous waste control. The Agency, therefore, is granting a final conditional exclusion to USX Corporation, located in Chicago, Illinois, for its fully-cured chemically stabilized electric arc furnace dust treatment residue, described in its petition as EPA Hazardous Waste No. K061. The exclusion only applies to 35,000 tons of chemically stablilized electric arc furance dust generated annually by the processes covered by the original demonstration. The facility would require a new exclusion if its manufacturing or treatment processes are significantly altered such that an adverse change in waste composition occurred. Accordingly, the facility would need to file a new petition for the altered waste. The facility must treat waste generated either in excess of 35,000 tons per year or from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition is relieved from subtitle C jurisdiction, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Limited Effect of Federal Exclusion

The final exclusion for USX is being granted under the Federal (RCRA) delisting program. On April 30, 1990, the State of Illinois received authorization to administer a number of RCRA programs, including delisting, in lieu of the Federal program. EPA would normally transfer the delisting petition file to the State for further action. In this case, however, USX has indicated that the delisted waste may be transported for disposal to another State not authorized for delisting. Because any decision by an authorized State to delist a waste would only have effect within that State, a Federal delisting would still be needed for out of State transport as nonhazardous waste. Furthermore, because EPA was close to issuing the final exclusion for USX, the Agency believes it is appropriate to follow through with its decision. While a Federal delisting will not have any immediate effect within an authorized State, such action may expedite the implementation of the final exclusion by allowing Illinois the option of adopting the Federal rule directly, and thereby avoiding the need for the State to complete its own time-consuming administrative process for delisting. Therefore, the Agency has decided to proceed with the final rulemaking and is granting a Federal delisting to USX.

IV. Effective Date

This rule is effective April 29, 1991. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this rule should be effective April 29, 1991. These reasons also provide a basis for making this rule effective April 29, 1991, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous. There is no additional economic impact, therefore, due to today's rule.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

List of Subjects in 40 CFR Part 261

Hazardous Waste, Recycling and Reporting and Recordkeeping Requirements.

Dated: April 17, 1991.

Jeffery D. Denit,

Deputy Director Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR part 261 shall be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922 and 6938.

2. In table 2 of appendix IX, add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste Description
USX Steel Corporation, USS Division, Southworks Plant, Gary Works.	Chicago, Illinois	Fully-cured chemically stabilized electric arc furnace dust/sludge (CSEAFD) treatment residue (EPA Hazardous Waste No. K061) generated from the primary production of steel after April 29, 1991. This exclusion (for 35,000 tons of CSEAFD per year) is conditioned upon the data obtained from USX's full-scale CSEAFD treatment facility. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern once the full-scale treatment facility is in operation, USX must implement a testing program for the petitioned waste. This testing program must meet the following conditions for the exclusion to be valid: (1) *Testing:* Sample collection and analyses (including quality control (QC) procedures) must be performed according to SW–846 methodologies. (A) *Initial Testing:* During the first four weeks of operation of the full-scale treatment system, USX must collect representative grab samples of each treated batch of the CSEAFD and composite the grab samples daily. The daily composites, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals, nickel, and cyanide (using distilled water in the cyanide extractions), and the total concentrations of reactive sulfide and reactive cyanide. USX must report the analytical test data, including quality control information, obtained during this initial period no later than 90 days after the treatment of the first full-scale batch. (B) *Subsequent Testing:* USX must collect representative grab samples from every treated batch of CSEAFD generated daily and composite all of the grab samples to produce a weekly composite sample. USX then must analyze each weekly composite sample for all of the EP toxic metals, and nickel. The analytical data, including quality control information, must be compiled and maintained on site for a minimum of three years. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Illinois. (2) *Delisting levels:* If the EP extract concentrations for chromium, lead, arsenic, or silver exceed 0.315 mg/l; for barium exceeds 6.3 mg/l; for cadmium or selenium exceed 0.063 mg/l; for mercury exceeds 0.0126 mg/l; for nickel exceeds 3.15 mg/l; or for cyanide exceeds 4.42 mg/l, total reactive cyanide or total reactive sulfide levels exceed 250 mg/kg and 500 mg/kg, respectively, the waste must either be re-treated until it meets these levels or managed and disposed of in accordance with Subtitle C of RCRA. (3) *Data submittals:* Within one week of system start-up USX must notify the Section Chief, Delisting Section (see address below) when their full-scale stabilization system is on-line and waste treatment has begun. The data obtained through condition (1)(A) must be submitted to the Section Chief, Delisting Section, CAD/OSW (OS–333), U.S. EPA, 401 M Street, S.W., Washington, DC 20460 within the time period specified. At the Section Chief's request, USX must submit any other analytical data obtained through conditions (1)(A) or (1)(B) within the time period specified by the Section Chief. Failure to submit the required data obtained from conditions (1)(A) or (1)(B) within the specified time period or maintain the required records for the specified time will be considered by the Agency, at its discretion, sufficient basis to revoke USX's exclusion to the extent directed by EPA. All data must be accompanied by the following certification statement: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code which include, but may not be limited to, 18 U.S.C. § 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of wastes will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion."

[FR Doc. 91–9897 Filed 4–26–91; 8:45 am]
BILLING CODE 6560–50–M

40 CFR Part 261

[SW-FRL-3951-5]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a final exclusion from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 for specified wastes to be generated by Occidental Chemical Corporation, Delaware City, Delaware. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 268, 124, 270 and 271 of title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: April 29, 1991.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW., room M-2427, Washington, DC 20460, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The reference number for this docket is "F-90-OTEF-FFFFF". The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Narendra Chaudhari, Office of Solid Waste (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4787.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine (1) that the waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) that no other hazardous constituents are present in the wastes at levels of regulatory concern.

B. History of this Rulemaking

Occidental Chemical Corporation (Occidental), located in Delaware City, Delaware, petitioned the Agency to exclude from hazardous waste control a specific waste that it intends to generate. After evaluating the petition, on October 5, 1989, EPA proposed to exclude Occidental's waste from the lists of hazardous waste under 40 CFR 261.31 and 261.32, conditional upon Occidental's meeting certain sampling, analysis, and reporting requirements. See 54 FR 41114.

Occidental petitioned the Agency for an "upfront" exclusion. A petitioner requests an upfront exclusion for wastes that have not yet been generated or that will be subject to further treatment. When treatment is planned, an upfront delisting petition requests that an exclusion be granted based on untreated waste characteristics, pilot-scale treatment data if available, and process descriptions. As a condition of an upfront exclusion, the Agency may impose batch testing requirements, which often include analytical testing of representative samples obtained from the full-scale system. These data can be used to verify that the treatment system, once on-line, is operating as described in the petition. The Agency may also specify verification testing limitations (*i.e.*, the maximum allowable levels of hazardous constituents of concern in the waste) in the conditions of the granted exclusion. When the actual levels of the constituent of concern are below these levels, the waste will not be considered hazardous. If the actual levels of the constituents are above these levels, the waste is still considered to be hazardous and must be retreated or disposed in accordance with RCRA Subtitle C requirements.

This rulemaking addresses public comments received on the proposal and finalizes the proposed exclusion.

II. Disposition of Petition

Occidental Chemical Corporation, Delaware City, Delaware.

1. Proposed Exclusion

Occidental petitioned the Agency to conditionally exclude from regulation as a hazardous waste its treated mercury brine muds, presently listed as EPA Hazardous Waste No. K071—"Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used." Occidental based its petition on the claim that the constituent of concern, although present in the waste, was in an essentially immobile form. To support its claim that both the non-listed and listed constituents of concern would not be present in the treated wastes above levels of regulatory concern, Occidental submitted (1) detailed descriptions of its manufacturing and proposed waste treatment processes: (2) a list of the raw materials used in both the manufacturing and treatment processes; (3) results from total constituent and Extraction Procedure (EP) toxicity analyses for all the EP toxic metals, nickel and cyanide; (4) results from total constituent analyses for total sulfide and total oil and grease, and; (5) information on the characteristics of ignitability, corrosivity and reactivity. These analyses were performed on representative samples of Occidental's treated wastes, as generated using a laboratory-scale treatment system.

The Agency evaluated the information and analytical data provided by Occidental in support of its petition and determined that the hazardous constituents found in the petitioned waste would not pose a threat to human health and the environment. In order to evaluate the potential hazards of the petitioned waste, the Agency considered the various possible exposure scenarios for this type of waste. Specifically, the Agency used its vertical and horizontal spread (VHS) model to evaluate the scenario where the petitioned waste is disposed in an unlined landfill and subsequently leaches into the ground water (*i.e.*, no unsaturated zone). Based on this evaluation, the Agency determined that the constituents in Occidental's waste would not migrate at concentrations above the health-based levels used in delisting decision-making. See 54 FR 41114, October 5, 1989, for a more detailed explanation of why EPA proposed to grant Occidental's petition for an upfront exclusion of treated mercury brine muds (K071) to be generated at its Delaware City, Delaware facility.

2. Agency Response to Public Comments

The Agency received public comments from two interested parties. One commenter supported the proposed rule, and made some suggestions for minor changes to the proposed conditional testing requirements. The second commenter opposed the Agency's proposed rule for several reasons.

Suggested Modifications to Proposed Rule

One commenter suggested that the term "sludges" (*i.e.*, those wastes identified in the petition as sodium chloride treatment sludges (NaCl–TS) and potassium chloride treatment sludges (KCl–TS)) be replaced by the term "muds."

The Agency has no objection to this change, as it does not alter the Agency's evaluation in any way. Thus, the rule now refers to sodium chloride treatment muds (NaCl–TM) and potassium chloride treatment muds (KCl–TM), replacing the proposed NaCl–TS and KCl–TS, respectively.

The commenter also suggested that the phrase "on a daily basis" be deleted from the provisions of testing conditions 1(A) and 1(B), because the waste streams are not normally generated on a daily basis.

The Agency believes the requested modification is appropriate. In developing the proposed conditional testing requirements, the Agency wanted to ensure that any given volume of waste treated at a single time (*i.e.*, a batch) be adequately represented in the daily and weekly composite sample (conditions 1(B) and 1(A), respectively). In other words, the Agency is emphasizing that the definition of a "batch" must be limited to that volume of waste treated at a given time. The Agency realizes, however, that some facilities may not generate a batch of treated waste on a daily basis. Therefore, the testing requirements stipulated in conditions 1(A) and 1(B) in the final rule have been modified; the term "on a daily basis" has been eliminated. As a result of these clarifications, Occidental, in accordance with condition 1(A) is required to sample each batch of the three wastes produced during the week, and in accordance with condition 1(B) is required to sample each batch of the three wastes produced on any given day. Occidental is not required by either condition 1(A) or 1(B) to collect samples on days when waste is not generated.

Lastly, the commenter suggested that only mercury be required as part of the subsequent testing because no other constituents (*i.e.*, the remaining EP toxic metals, nickel or cyanide) are listed constituents of concern for K071 wastes.

The Agency will not modify the conditional testing requirements to incorporate this change. These post-exclusion testing requirements were incorporated to ensure that Occidental's full-scale treatment system can successfully render the K071 wastes non-hazardous, and to ensure that no other additional factors (including additional constituents) are present at levels which may cause the waste to be hazardous waste. Furthermore, the Agency believes the commenter may have overlooked the fact that the testing requirements for the remaining EP metals, nickel, cyanide, total reactive cyanide, and total reactive sulfide may indeed be terminated (as discussed in Condition 2(A)) after the initial four-week testing period (as long as Occidental's treatment system works as effectively as portrayed in the initial demonstration and the appropriate delisting levels are met).

Petition Specific Comments

One commenter opposed the Agency's proposed rule for the reasons discussed below.

Total Constituent Concentrations

The commenter stated that the waste still exhibits one of the criteria for which it was listed—the presence of significant concentrations of mercury. The commenter also noted that Occidental's treatment residues exhibit 1,000 times the background level of mercury typically found in soils and that lead and chromium are present at high levels in one of Occidental's three treated K071 wastes. The commenter, therefore, believes that Occidental's treatment residues represent at least a potential risk to human health and the environment.

The Agency agrees that the presence in K071 wastes of significant total concentrations of mercury was one of the reasons for listing K071 wastes as a "T" (toxic) waste. See 40 CFR 261.11(a)(3)(ii) and "Background Document, Resource Conversation and Recovery Act, subtitle C, Hazardous Waste Management System, section 3001, Identification and Listing of Hazardous Waste, 1980." The Agency, however, believes the data presented in the Background Document broadly characterize the physical and chemical nature of mercury brine purification muds, and that these data are not representative of the physical and chemical nature of Occidental's treated K071 wastes.

First, the concentrations of total and EP leachable mercury present in Occidental's treated K071 wastes are significantly less than the levels of total and EP leachable mercury typically found in untreated K071 wastes (see Background Document noted above). Second, EPA believes it is reasonable to expect that, as the total constituent concentration of an unbound or loosely bound metal present in a waste increases, the potential for the metal to leach from the waste also increases (generally, the higher the total constitutent concentration of an unbound or loosely bound metal, the higher the potential EP leachate concentration). Thus, wastes having significant total constituent concentrations of unbound or loosely bound metals, as did those considered in the Background Document, are more likely to impact the underlying ground water than wastes having lower total constituent concentrations of unbound or loosely bound metals. Here, however, unlike the mercury brine muds considered in the Background Document for K071 wastes, the metals in Occidental's treated K071 wastes are tightly bound within the waste matrix. Thus, the Agency believes that the levels of the metals present in Occidental's K071 treated wastes should not pose a threat to either human health or the environment. The Agency's conclusion that the listed and non-listed inorganic constituents of concern are bound in the waste matrix and thus, are not available for leaching, is supported by the result of the EP leachate analyses. See 54 FR 41114, October 5, 1989.

EPA evaluated the potential mobility of Occidental's treated K071 wastes using the maximum EP leachate concentrations and the vertical and horizontal spread (VHS) model. For the volume of waste to be generated by Occidental (a total of 1,018 tons per year for all three treated K071 wastes), the VHA model predicts a dilution factor of approximately 15.5. The VHS model analysis provides a conservative and reasonable worst-case evaluation of the waste's effect on the underlying aquifer. The predicted compliance-point concentrations resulting from this conservative analysis were below the levels of concern used for delisting purposes. See 54 FR 41114, October 5, 1989, for a description of the modeling analysis of Occidental's waste.

Furthermore, in delisting evaluations, EPA considers all the factors for which the waste was listed, as well as factors other than those for which the waste was originally listed, that could cause the waste to be hazardous. See 42 U.S.C. 6921(f). For this specific wastestream, based on the discussion presented above and in the proposal, EPA does not believe that any other factors, including total concentrations of the listed and non-listed inorganic constituents of concern, could cause this wastestream to present a hazard to human health and the environment.

Alternative Routes of Exposure

The commenter also contends that the Agency failed to consider the risk to human health and the environment through air or surface waste exposure paths if the waste is mismanaged during transportation or other handling prior to disposal.

The Agency believes that the commenter's concerns regarding airborne disposal of the waste are unfounded. First, the Agency notes that Occidental's untreated wastes will continue to be regulated as hazardous wastes. Therefore, the requirements under RCRA for transport and storage will provide some control of any releases of untreated wastes to the atmosphere. With regard to Occidental's treated K071 wastes, Occidental must either dispose of their treated K071 wastes on-site or ensure that the treated K071 wastes are delivered to an off-site storage, treatment or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. See 54 FR 41114, October 5, 1989.

EPA does not believe that airborne exposure to hazardous contaminants from Occidental's NaCl-TM and KCl-TM wastes are likely to present a hazard to human health or the environment, because Occidental has stated that the NaCl-TM and KCl-TM will contain approximately 50–60 percent moisture. With this level of moisture, none of the wastes will likely emit respirable particles prior to disposal. In fact, it is most likely that the NaCl-TM and KCl-TM wastes will not lose significant amounts of moisture until long after they have been disposed at an appropriate solid waste disposal facility. Upon initial disposal at Subtitle D facilities, it is standard practice to cover each day's waste with a soil layer in order to contain the waste and protect it from adverse weather conditions. This practice also further slows the moisture loss from the treated K071 wastes. As discussed further below, however, EPA did evaluate airborne exposure from Occidental's NaCl-TM and KCl-TM wastes.

Unlike the NaCl–TM and KCl–TM wastestreams, Occidental's NaCl-SC wastes will be managed as almost 100 percent solids. While EPA believes that exposure to hazardous airborne contaminants from Occidental's NaCl-SC wastes is still unlikely to present a hazard to human health or the environment because the wastes would likely be covered with soil after landfill disposal, the Agency, in order to fully respond to the specific comment, evaluated the hazards resulting from such an exposure to all three of Occidental's wastestreams. Specifically, EPA used the methodology documented in "Rapid Assessment of Exposure to Particulate Emissions from Surface Contamination Sites," U.S. Environmental Protection Agency, Office of Health and Environmental Assessment, EPA/600/8–85/002, February 1985, to estimate respirable particulate emissions from wind erosion of surface with an "unlimited reservoir" of erodible particles. The worst-case emission rate derived from this methodology then was used as an input to the Agency's Ambient Air Dispersion Model (AADM), a steady-state, Gaussian plume dispersion model, to predict the concentrations of the inorganic constituents 1,000 feet downwind of the facility. For a complete description and discussion of the AADM, see 50 FR 48963, November 27, 1985.

In this specific analysis, the Agency assumed conservative values for all variables likely to influence potential soil erosion, including wind velocity and vegetation. The Agency, however, modified the assumptions regarding unit dimensions used in the AADM to more closely resemble a landfill rather than a land treatment unit (*i.e.*, unit depth was changed from one foot to eight feet as used in the VHS model). The results of this conservative, worst-case analysis indicated that no substantial present or potential hazard to human health or the environment is likely from airborne exposure to both the listed and non-listed inorganic constituents from Occidental's NaCl–SC wastestream (or NaCl–TM and KCl–TM wastestreams). (A complete description of the Agency's modeling and analysis of air emissions from Occidental's K071 wastes is presented in "Docket Report on Evaluation of Air Emissions Resulting from Occidental Chemical Corporation's K071 Wastes," April 17, 1990, which is available in the docket for today's final rule.)

With regard to waterborne dispersal of the waste, it is important to note that Occidental's K071 wastes will be handled as hazardous until treated. The VHS model analysis described in the proposal shows that leachate from the treated residues that travels through ground water will not exceed health-based levels.

The Agency acknowledges that it may also be possible for surface water runoff to transport contaminants from the waste to a nearby surface water body. However, the Agency does not believe that analysis of such overland transport of contaminants as a reasonable exposure route for the petitioned waste would compel a different result from this petition. As described in the proposed rule, the Agency believes that landfill disposal is a reasonable worst-case scenario for Occidental's treated K071 wastes. While contamination of surface water might possibly occur through runoff from the petitioned waste, EPA believes that the concentrations of any hazardous constituents in that runoff will tend to be lower than the levels in the EP leachate analyses reported in the proposal due to the acidic medium of the EP test. Furthermore, any transported constituents would be further diluted in the surface water body. Finally, the Agency believes that, in general, the leachate derived from this waste will not directly enter a surface water body without first travelling through the saturated (subsurface) zone where dilution and attenuation of hazardous constituents may occur. The VHS model takes this saturated zone into account as it predicts the ultimate fate and transport of hazardous constituents.

VHS Model

The commenter believes that the VHS landfill model cannot be assumed to predict a reasonable worst case when applied to Occidental's waste because the model assumes the Occidental's wastes will be the only source of contamination affecting the underlying ground water.

As the Agency discussed in the Federal Register on February 26, 1985 and on November 13, 1986 (see 50 FR 7806 and 51 FR 41085), the VHS model analysis assumes that there are no other potential contaminant sources at the disposal site (*i.e.*, leachate from the waste mixed with non-contaminated ground water). Additionally, without specifying management conditions or considering site-specific characteristics, the Agency cannot modify the VHS model to assess the effects of additional contaminant sources on the underlying aquifer within the same disposal site.

The commenter is inferring that wastes should not be delisted unless the VHS-predicted at-the-well concentrations of the contaminants are significantly less (*e.g.*, 50 percent, 75 percent, 95 percent) than their respective health-based levels. The Agency does not have any technical basis to support a determination of an appropriate percentage reduction and believes that, without a technical basis, any resulting percentage reduction would be arbitrary. Therefore, in light of the conservative nature of the VHS model, EPA will continue to allow wastes to exhibit predicted compliance-point

concentrations up to 100 percent of the health-based standard.

The commenter also contends that the VHS model is inadequate because it considers the impact of only one year of waste disposal, rather than the cumulative impact of continuing disposal. The commenter noted that after 2.5 years of such waste generation and disposal, the VHS model predicts that lead and mercury will exceed their respective health-based levels. The commenter believes this situation is further exacerbated by the fact that the proposed rule does not set limits on the waste volume Occidental will be allowed to manage as non-hazardous.

The commenter is incorrect in stating that the Agency is not justified in using annual waste volumes instead of cumulative waste volumes. The Agency considers the use of annual or one-time waste volumes to be sufficiently conservative since it is a reasonable worst-case for a petitioner to dispose of one year's accumulated waste in a single landfill cell at one time. Based on routine landfill management practice, EPA believes that it is unreasonable to assume, even in a worst-case scenario, one time disposal in the same landfill cell of waste continuously generated over 2.5 years. Specifically, wastes continuously generated are not disposed of in the same landfill cell. Rather, continuously generated wastes (if disposed of at the same landfill) are periodically distributed throughout the entire landfill, as the landfill is filled. The Agency notes that it is common engineering practice for typical municipal landfill operations to involve the use of successive lifts or cells which are covered daily with clean fill.[1] Specifically, wastes are placed in a lift (or cell), compacted, and covered with clean fill daily. Successive lifts are placed next to each other and then on top of one another until the final grade of the landfill is reached. Therefore, it is not unreasonable for EPA to assume that wastes disposed of throughout the entire year will be placed in cells with other wastes and clean fill material, and that the location of these cells will change as the landfill manages its operation. The Agency notes that most landfills utilize more than one lift or cell and considers the commenter's assertions that wastes disposed of in different years (*e.g.*, 2.5 years) are disposed of in the same cell to be unrealistic.

[1] Tchobanoglous, George. "Solid Wastes: Engineering Principles and Management Issues," McGraw-Hill Series in Water Resources and Engineering, McGraw-Hill Publishing Co., Copyright 1977, pages 316–325.

The Agency believes that periodic disposal of a continuously generated waste over the course of time (*e.g.*, 2.5 years) would likely increase mixing (*i.e.*, dilution) of the petitioned waste with other non-hazardous materials and fill materials (*e.g.*, native soils) at the Subtitle D landfill, and the waste's effect on the underlying aquifer would be reduced. The Agency, therefore, believes the assumption that the annual waste volume is disposed in the same landfill cell is a reasonable worst-case and is protective of human health and the environment. With regard to the commenter's concern regarding waste volume limitations, see the discussion under Conditional Testing Requirements.

Inconsistency with Land Disposal Restrictions

The commenter is disturbed by the fact that the delisting level for mercury set in Condition (3) of the proposed rule is greater than the treatment level for mercury established for K071 wastes under the Land Disposal Restrictions Program (LDRP).

The Agency agrees with the commenter that there are differences between some of the decision criteria used in individual delisting decisions and those used in the LDRP. However, these differences are appropriate given the separate functions of the two programs and their different statutory bases. The Delisting Program and the LDRP are fundamentally different in that the Delisting Program's standards are health-based and the LDRP's treatment standards are currently technology-based. See RCRA Section 3001 (42 U.S.C. 6921) and RCRA Section 3004 (42 U.S.C. 6924(m)), respectively. It is the Agency's view that Congress expected the Agency to adopt a different approach to establishing the LDRP's treatment standards than the approach used heretofore by the Agency in establishing Subtitle C regulatory standards. For the LDRP's treatment standards the Agency is to set standards that diminish waste toxicity or mobility in order that "short-term and long-term threats to human health and the environment be minimized." This may result in a standard different from one set according to the usual Subtitle C regulatory command that standards be necessary to protect human health and the environment.

Conditional Testing Requirements

With regard to the proposed testing requirements, the commenter stated that the testing requirements should be expanded to include total levels of mercury.

The Agency disagrees with the commenter. The Agency expects that this waste will be disposed of in a municipal waste disposal scenario where soil conditions are generally expected to be mildly acidic. EPA believes that the EP extraction procedure is the most appropriate analytical tool to evaluate the potential leachability of this waste in an acidic environment. For this waste, EPA believes that evaluation of the EP leachable concentrations as required by the conditions of this exclusion will be adequate to protect human health and the environment. Furthermore, the Agency does not have health-based levels regulating the total concentations of any of the EP toxic metals or nickel. To require Occidental to continually monitor for the total constituent concentration of mercury will not ensure further protection of human health and the environment.

The commenter noted if the petition were to be granted, then the Agency's proposed conditional testing requirements should include several additional provisions. The commenter is specifically concerned about post-exclusion alterations in Occidential's manufacturing and/or treatment processes. The commenter noted that an "adverse" process change was not defined by the Agency, nor did the Agency specify who would determine whether or not an adverse process change had occurred.

When evaluating delisting petitions, the Agency examines the processes that produce the waste(s) in detail in order to gain an understanding of the manufacturing and treatment processes. EPA, then determines if the processes are variable (*e.g.*, include seasonal products, batch dumps, irregular or infrequent dumps, scheduled maintenance operations) and as such, are likely to generate wastes exhibiting variability in constituent concentrations (and waste characteristics). This evaluation allows EPA to determine whether the analytical data provided in the petition are representative of the potential range of variations in both the presence and levels of constituents occurring over time. (The Agency realizes that minor process variations will occur on a day-to-day basis, and that such minor day-to-day variations do not notably influence the waste's physical and chemical characteristics. However, the levels of any hazardous constituents in the waste and their mobility are the primary concern of the Agency.)

EPA views any process change as significant (or adverse) if, as a result of

the change: (1) The manufacturing or treatment processes are no longer the same as described in the original delisting petition, or (2) hazardous constituents may be present in greater concentrations than prior to the process change or new constituents may be detected in the waste at levels of concern. The Agency, however, is not concerned with "process changes" which neither alter the manufacturing or treatment processes nor affect waste composition. Examples of such "process changes" (*i.e.*, non-adverse or insignificant process changes) include identical raw materials or process chemicals purchased from different manufactures (materials with different names but having the same ingredients), replacement of worn filter press plates with plates having identical characteristics (*i.e.*, pore size), and rescheduling of manufacturing lines. (For example, interchanging the scheduled operation of a nickel plating line and a brass plating line; each line would continue to operate the same length of time, and no new lines, such as a zinc plating, would be added.) These types of "process changes" would not alter waste composition (and characteristics) outside of the range demonstrated in the original demonstration.

Therefore, EPA's policy concerning process changes has not undergone any change. The Agency continues to view changes to processes which either change the processes as originally described in the petition or are likely to elevate constituent levels or introduce new constituents of concern as outside the scope of the original delisting petition. Such changes clearly would result in a new waste no longer covered by the promulgated exclusion.

Due to the possible variations in Occidental's waste, the Agency proposed that Occidental perform periodic testing of its treated K071 waste; the Agency continues to believe that such periodic testing is appropriate in this case. In addition, volume limitations incorporated in today's rule (as discussed further below) will also discourage any adverse process changes.

The commenter also believed that EPA should modify the proposed exclusion language pertaining to changes in waste volume, prohibiting Occidental from increasing its annual waste generation rate over the estimated 1,018 tons per year (total) for all three treated K071 wastes.

The Agency believes that it is unlikely for Occidental to significantly increase its waste generation without modifying its production processes. The Agency, however, does not believe that the petitioner will be adversely affected by a volume limitation because the petitioner was required to provide (and certify as correct) an accurate estimation of its maximum annual waste generation rate. The Agency, therefore, has modified the final rule to include a volume limitation. As a result of this volume limitation, any volume of waste generated in excess of 1,018 tons per year would be hazardous and must be handled in accordance with the applicable Subtitle C regulations.

The commenter requested that EPA require Occidental to report the amounts of waste covered by the delisting that are actually generated, treated and set for disposal. The commenter believes such information will provide additional assurance that Occidental is complying with the volume limitations set forth in the exclusion. The commenter also believes that failure to submit the required conditional data, or disposal of amounts of waste in excess of the volume limitation, should automatically result in revocation of the exclusion.

The Agency agrees with the commenter that Occidental should be required to keep records of the amount of treated wastes generated. As noted in the preamble to the rule and in the rule itself, the exclusion is applicable only for 1,018 tons per year of treated K071 wastes. Any treated K071 wastes generated above and beyond the 1,018 tons per year limit must be managed as hazardous. Occidental is responsible for adhering to this 1,018 ton annual limit, and would be subject to the appropriate enforcement actions if wastes in excess of the 1,018 ton per year limitation are handled as non-hazardous. As noted in the proposal, all petitioners are required to submit a signed certification statement with conditional data submittal. This certification statement binds the petitioner to conduct the conditional testing and subsequent waste management in an appropriate manner. (EPA notes that several minor typographical errors contained in the certification statement were found and have been corrected in today's rule.) To further clarify the volume limitations of the exclusion, EPA has added language to the rule that explicitly states the maximum annual volume and requires Occidental to keep records (as part of the testing conditions) of the volume of waste generated. EPA does not believe that this record keeping requirement will impact Occidental because Occidental will have to track its waste generation in order to comply with the volume limitations of the exclusion.

The Agency does not consider it necessary to act upon the commenter's suggestion that failure to submit conditional data should automatically result in revocation of the exclusion. The Agency believes that the commenter overlooked the requirement that Occidental sign the certification statement (discussed above) for each conditional data submittal. This certification statement requires that if false, fraudulent or incomplete data are submitted as part of the final exclusion, the exclusion will be void as if it never had effect or to the extent directed by EPA, and that Occidental will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon Occidental's reliance on the void exclusion.

3. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that Occidental's treated K071 wastes, when subject to the verification testing requirements specified in the exclusion, should be excluded from hazardous waste control. The Agency, therefore, is granting a final conditional exclusion to Occidental Chemical Company, located in Delaware City, Delaware, for its treated K071 wastes, described in its petition as EPA Hazardous Waste No. K071. The exclusion applies only to the processes covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes are significantly altered such that an adverse change in waste composition or increase in waste volume occurred. Accordingly, the facility would need to file a new petition for the altered waste. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition is relieved from subtitle C jurisdiction, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Limited Effect of Federal Exclusion

The final exclusion being granted today is being issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their

own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Since a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

IV. Effective Date

This rule is effective April 29, 1991. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose to Section 3010, EPA believes that this rule should be effective April 29, 1991. These reasons also provide a basis for making this rule effective April 29, 1991 under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous. There is no additional economic impact, therefore, due to today's rule.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

Lists of Subjects in 40 CFR Part 261

Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: April 12, 1991.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In table 2 of appendix IX, add the following wastestream in alphabetical order:

Appendix IX—Waste Excluded Under §§ 260.20 and 260.22

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
* * * * * * *		
Occidental Chemical Corporation	Delaware City, Delaware	Sodium chloride treatment *muds* (NaCl–TM), sodium chloride saturator cleanings (NaCl–SC), and potassium chloride treatment muds (KCl–TM) (all classified as EPA Hazardous Waste No. K071) generated at a maximum combined rate (for all three wastes) of 1,018 tons per year. This exclusion was published on April 29, 1991 and is conditioned upon the collection of data from Occidental's full-scale brine treatment system because Occidental's request for exclusion was based on data from a laboratory-scale brine treatment process. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern once the full-scale treatment system is in operation, Occidental must implement a testing program for the petitioned waste. All sampling and analyses (including quality control procedures) must be performed according to SW–846 methodologies. This testing program must meet the following conditions for the exclusion to be valid: (1) *Initial Testing:* During the first four weeks of full-scale treatment system operation, Occidental must do the following:

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(A) Collect representative grab samples from each batch of the three treated wastestreams (sodium chloride saturator cleanings (NaCl–SC), sodium chloride treatment muds (NaCl–TM) and potassium chloride treatment muds (KCl–TM)) on an as generated basis, and composite the samples to produce three separate weekly composite samples (of each type of K071 waste). The three weekly composite samples, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals (except mercury), nickel and cyanide (using deionized water in the cyanide extractions), and the total constituent concentrations of reactive sulfide and reactive cyanide. Occidental must report the waste volumes produced and the analytical test data, including all quality control data, obtained during this initial period, no later than 90 days after the treatment of the first full-scale batch. (B) Collect representative grab samples of each batch of the three treated wastestreams (NaCl–SC, NACl–TM and KCl–TM) and composite the grab samples to produce three separate daily composite samples (of each type of K071 waste) on an as generated basis. The three daily composite samples, prior to disposal, must be analyzed for the EP leachate concentration of mercury. Occidental must report the waste volumes produced and the analytical test data, including all quality control data, obtained during this initial period, no later than 90 days after the treatment of the first full-scale batch. (2) *Subsequent Testing:* After the first four weeks of full-scale treatment operations, Occidental must do the following (all sampling and analyses (including quality control procedures) must be performed according to SW–846 procedures): (A) Continue to sample and test as described in condition (1)(A). Occidental must compile and store on-site for a minimum of three years the records of waste volumes produced and all analytical data and quality control data. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Delaware. These testing requirements shall be terminated by EPA when the results of four consecutive weekly composite samples of the petitioned waste, obtained from either the initial testing or subsequent testing, show the maximum allowable levels in condition (3) are not exceeded and the Section Chief, Variances Section, notifies Occidental that the requirements of this condition have been lifted. (B) Continue to sample and test for mercury as described in condition (1)(B). Occidental must compile and store on-site for a minimum of three years the records of waste volumes produced and all analytical data and quality control data. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Delaware. These testing requirements shall be terminated and replaced with the requirements of condition (2)(C) if Occidental provides EPA with analytical and quality control data for thirty consecutive batches of treated material, collected as described in condition (1)(B), demonstrating that the EP leachable level of mercury in condition (3) is not exceeded (in all three treated wastes), and the Section Chief, Variances Section, notifies Occidental that the testing in condition (2)(B) may be replaced with (2)(C). (C) [If the conditions in (2)(B) are satisfied, the testing requirements for mercury in (2)(B) shall be replaced with the following condition.] Collect representative grab samples from each batch of the three treated wastestreams (NaCl–SC, NaCl–TM and KCl–TM) on an as generated basis and composite the grab samples to produce three separate weekly composite samples (of each type of K071 waste). The three weekly composite samples, prior to disposal, must be analyzed for the EP leachate concentration of mercury. Occidental must compile and store on-site for a minimum of three years the records of waste volumes produced and all analytical data and quality control data. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Delaware.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(3) If under conditions (1) or (2), the EP leachate concentration for chromium, lead, arsenic, or silver exceeds 0.77 mg/L; for barium exceeds 15.5 mg/L; for cadmium or selenium exceeds 0.16 mg/L; for mercury exceeds 0.031 mg/L; for nickel or total cyanide exceeds 10.9 mg/L; or the total reactive cyanide or total reactive sulfide levels exceeds 250 mg/kg and 500 mg/kg, the waste must either be retreated or managed and disposed of in accordance with all applicable hazardous waste regulations. (4) Within one week of system start-up, Occidental must notify the Section Chief, Variances Section (see address below) when the full-scale system is on-line and waste treatment has begun. All data obtained through condition (1) must be submitted to the Section Chief, Variances Section, PSPD/OSW, (OS-333), U.S. EPA, 401 M Street, SW., Washington, DC 20460 within the time period required in condition (1). At the Section Chief's request, Occidental must submit any other analytical data obtained through conditions (1) and (2) to the above address within the time period specified by the Section Chief. Failure to submit the required data will be considered by the Agency sufficient basis to revoke Occidental's exclusion to the extent directed by EPA. All data (either submitted to EPA or maintained at the site) must be accompanied by the following statement: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to 18 U.S.C. 1001 and 42 U.S.C. 6926), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of wastes will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion."
* * * * *	* *	

[FR Doc. 91-9898 Filed 4-26-91; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6851

[ID-943-4214-10; IDI-27802]

Partial Revocation of Public Land Order No. 3842; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a public land order insofar as it affects 20.30 acres of public land withdrawn for the Bureau of Land Management's Powersite Classification No. 454. The withdrawal is being revoked to permit the lease of public land under the Recreation and Public Purpose Act to Twin Falls County for a public recreation facility. The land is not needed for the purpose for which it was withdrawn. This action will open the land to surface entry. The land has been and will remain open to the mining and mineral leasing laws.

EFFECTIVE DATE: May 29, 1991.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706 (208) 384-3166.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 3842, which withdrew public land for Powersite Classification No. 454, is hereby revoked insofar as it affects the following described land:

Boise Meridian

T. 9 S., R. 17 E.,
sec. 33, lot 3.

The area described contains 20.30 acres in Twin Falls County.

2. At 9 a.m. on May 29, 1991, the land described in paragraph one above shall be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on May 29, 1991, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: April 18, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-9982 Filed 4-26-91; 8:45 am]

BILLING CODE 4310-GG-M

43 CFR Public Land Order 6852

[NV-930-4214-10; Nev-051745]

Modification of the Secretarial Order of June 4, 1930

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order modifies a Secretarial order insofar as it affects 9.28 acres of public land withdrawn for the Bureau of Reclamation's Colorado River Storage Project. This action will open the land to a proposed sale to resolve a trespass situation in compliance with a court ordered stipulated agreement in a lawsuit. The land remains closed to all other forms of appropriation under the public land laws including the mining laws but has been and will remain open to mineral leasing.

EFFECTIVE DATE: April 29, 1991.

FOR FURTHER INFORMATION CONTACT: Mary Clark, BLM, Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 702-785-6530.

SUPPLEMENTARY INFORMATION:

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial order of June 4, 1930 is hereby modified to permit sale of the following described land:

Mount Diablo Meridian

T. 30 S., R. 64 E.,
Sec. 31, lots 5 to 12, inclusive.

The area described contains 9.28 acres in Clark County.

2. Effective immediately, subject to valid existing rights, the land shall be opened to sales under section 203 of the Federal Land Policy and Management Act in compliance with the United States District Court, District of Nevada, Order for Compromise Settlement and for Dismissal with Prejudice in the case, *Nancy Lynn Kidwell, et al.*, v. *United States of America, ex rel. United States Department of Interior, Bureau of Land Management, et al.*

Dated: April 18, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-9981 Filed 4-26-91; 8:45 am]

BILLING CODE 4310-HC-M

43 CFR Public Land Order 6853

[ID-943-4214-10; IDI-17810]

Partial Revocation of Secretarial Order Dated October 9, 1928; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Secretarial Order insofar as it affects 14.50 acres of National Forest System lands withdrawn for the Bureau of Reclamation's Boise Reclamation Project. The lands are no longer needed for reclamation purposes. This action will open the lands to surface entry and mining. The lands have been and will remain open to the mineral leasing laws.

EFFECTIVE DATE: May 29, 1991.

FOR FURTHER INFORMATION CONTACT: Larry Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706 (208) 334-1735.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Order dated October 9, 1928, which withdrew land for the Bureau of Reclamation's Boise Project, is hereby revoked insofar as it affects the following described lands:

Boise Meridian

T. 2 N., R. 5 E.,
Sec. 17, that portion of Riparian Placer Segregation Survey within lot 1;
Sec. 18, lot 4.

The areas described aggregate 14.50 acres in Elmore County.

2. At 9 a.m. on May 29, 1991, the lands described in paragraph one shall be open to such forms of disposition as may by law be made of National Forest System land, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law, including location and entry under the United States mining laws. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts. The lands have been and will remain open to the mineral leasing laws.

Dated: April 18, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-9980 Filed 4-26-91; 8:45 am]

BILLING CODE 4310-GG-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 15

[Regulation Identifier Number: 3067-AB65]

Conduct in Buildings and on Grounds at the National Emergency Training Center

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule prescribes the standards of conduct for persons entering onto the premises at the FEMA National Emergency Training Center (NETC) in Emmitsburg, Maryland. Currently there is no standard of conduct for visitors, contractors, guests or students at NETC. This rule is adapted from the General Services Administration regulations concerning Conduct on Federal Property, is revised to be agency specific and is applicable to the NETC facility owned by FEMA and under its custody and control. The implementation of this rule at NETC will provide a basis for corrective action in instances of violation(s) of the standard of conduct at the NETC facility.

EFFECTIVE DATE: June 1, 1991.

FOR FURTHER INFORMATION CONTACT: Ronald P. Face, Jr., Director, Office of NETC Operations and Support, U.S. Fire Administration, Federal Emergency Management Agency, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, Maryland 21727, Telephone (301) 447-1223.

SUPPLEMENTARY INFORMATION: FEMA published a proposed rule in the **Federal Register** on October 18, 1990, (55 FR 42216) with comments due on or before December 17, 1990. No comments were received.

This rule is essentially the same as the proposed rule. Minor changes have been made to conform this rule to internal

delegations concerning operations at NETC.

FEMA operates its National Emergency Training Center in Emmitsburg, Maryland. This regulations is administrative and, as such is categorically excluded from the requirements for environmental assessments contained in 44 CFR part 10.

This rule is not a major rule as defined in Executive Order 12291, nor will it have a significant economic impact on a substantial number of small entities. Hence, regulatory impact analyses are not necessary.

This rule does not contain information requirements that are subject to the Paperwork Reduction Act of 1980 (44 USC 3501, et seq.) and OMB implementing regulations 5 CFR 1320.

In promulgating this rule, FEMA has considered the Executive Order 12612 on Federalism. The purpose of the order is to assure the appropriate division of governmental responsibilities between national government and the States. The problem dealt with in this rule is national in scope.

List of Subjects in 44 CFR 15

Federal buildings and facilities; Penalties; Security measures.

Accordingly, chapter 1, part 15, title 44, Code of Federal Regulations is amended by designating existing §§ 15.1 through 15.15 as subpart A under the following heading and adding a new subpart B to part 15 to read as follows:

Subpart A—Conduct at the FEMA Special Facility

Subpart B—Conduct at the National Emergency Training Center

Sec.

Authorities: EO 11222, EO 12148, Federal Fire Prevention and Control Act of 1974, PL 93-498, 15 USC 2201, *et seq.*

§ 15.31 Purpose.

To set forth the National Emergency Training Center (NETC) policy and procedure relating to the NETC grounds and buildings and to the conduct of all persons entering, while on, and leaving the NETC, and actions to be taken for violation of these rules and regulations.

§ 15.32 Applicability.

This subpart applies to all the property known as the "National Emergency Training Center," located on 16825 South Seton Avenue in Emmitsburg, Maryland, which is owned, operated and controlled by the Federal Emergency Management Agency (FEMA) and to all persons entering, while on, or leaving the property.

§ 15.33 Inspection.

All vehicles, packages, handbags, briefcases, and other containers brought into, while on, or being removed from NETC may be subject to inspection. A full search of a person may accompany an arrest or apprehension.

§ 15.34 Preservation of property.

The improper disposal of rubbish at NETC, the willful destruction of or damage to property, the theft of property, the creation of any hazard to persons or things, the throwing of articles of any kind from or at a building, or the climbing upon the roof or any part of the building is prohibited.

§ 15.35 Conformity with signs and directions.

Persons in and on the NETC shall at all times comply with official signs of a prohibitory, regulatory, or directory nature and with the direction of the security force or other authorized individuals.

§ 15.36 Disturbances.

Any unwarranted loitering, disorderly conduct, or other conduct at NETC which creates loud or unusual noise or a nuisance; which unreasonably obstructs the usual use of classrooms, dormitory rooms, entrances, foyers, lobbies, corridors, offices, elevators, stairways, roadways or parking lots; which otherwise impedes or disrupts the performance of official duties by Government employees or Government contractors; which interferes with the delivery of the educational program; or which prevents the general public from obtaining the services provided on the property in a timely manner, is prohibited.

§ 15.37 Gambling.

Participating in games for money or other personal property or the operating of gambling devices, the conduct of a lottery or pool, or the selling or purchasing of numbers tickets at NETC is prohibited.

§ 15.38 Alcoholic beverages and narcotics.

Operating a motor vehicle at NETC by a person under the influence of alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines as defined in the Annotated Code of Maryland, Transportation Article, Section or Title 21902 is prohibited. Entering upon, or while on the property under the influence of or using or possessing any narcotic drug, hallucinogen, marijuana, or barbiturate, or amphetamine is prohibited. This prohibition shall not apply in cases where the drug has been prescribed for a patient by a licensed physician. Entering upon the property, or being on the property under the influence of alcoholic beverages as defined in the Annotated Code of Maryland, Transportation Article, Section or Title 21902 is prohibited. Bringing alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates or amphetamines onto the premises of NETC is prohibited unless the individual has been authorized. The use of alcoholic beverages on the property is prohibited except in the Student Center and other locations and occasions as authorized in writing by the Administrator, U.S. Fire Administration, FEMA, or his/her designee.

§ 15.39 Soliciting, vending and debt collection.

Soliciting alms and contributions, commercial or political solicitation and vending of all kinds, displaying or distributing commercial advertising, or collecting private debts at NETC are prohibited. This does not apply to:

(a) approved national or local fund drives for health, welfare, or other purposes as authorized by the "Manual on Fund Raising Within the Federal Service" issued by the U.S. Office of Personnel Management and sponsored or approved by the occupant agencies (all such drives must have the prior approval of the Administrator, U.S. Fire Administration, FEMA or his/her designee);

(b) concessions or personal notices posted by employees on authorized bulletin boards; and

(c) solicitation of labor organization membership or dues authorized by occupant agencies under the Civil Service Reform Act of 1978 title 5, United States Code, section 1101.

§ 15.40 Distribution of handbills.

The distribution of materials such as pamphlets, handbills, and/or flyers, and the displaying of placards or posting of materials on bulletin boards or elsewhere at NETC is prohibited except

as authorized above or when such distribution or displays are conducted as part of authorized government activity.

§ 15.41 Photographs and other depictions.

Photographs may be taken inside classroom or office areas only with the consent of the occupants. Except where security regulations apply or a Federal court order or rule prohibits it, photographs may be taken in entrances, lobbies, foyers, corridors, or auditoriums when used for public meetings. Subject to the foregoing prohibitions, photographs for advertising and commercial purposes may be taken only with written permission of the Director, Office of NETC Operations and Support, U.S. Fire Administration or other authorized official where the photographs are to be taken.

§ 15.42 Dogs and other animals.

Dogs and other animals, except for seeing eye dogs or other guide dogs, shall not be brought into the buildings at NETC for other than official purposes.

§ 15.43 Vehicular and pedestrian traffic.

(a) Drivers of all vehicles entering or while at NETC shall drive in a careful and safe manner at all times and shall comply with the parking and vehicle registration/requirements (except parking of four hours or less), signals and directions of security personnel and all posted traffic signs;

(b) The blocking of entrances, driveways, walks, loading platforms, or fire hydrants on the property is prohibited; and

(c) Parking without authority, parking in unauthorized locations or parking contrary to the direction of posted signs is prohibited. Vehicles parked in violation, where warning signs are posted, shall be subject to removal at the owner's risk and expense. The Administrator, U.S. Fire Administration or his/her designee may supplement this paragraph from time to time by issuing and posting such specific traffic directives as may be required. When issued and posted, such directives shall have the same force and effect as if made a part hereof. Proof that a motor vehicle was parked in violation of these regulations or other directives may be taken as evidence that the registered owner was responsible for the violation.

§ 15.44 Weapons and explosives.

No person entering or while at NETC shall carry or possess firearms, other dangerous or deadly weapons, explosives, or items intended to be used to fabricate an explosive or incendiary device, either openly or concealed, except for official purposes (i.e., Federal, State or local law enforcement; when authorized by the Administrator, U.S. Fire Adminstration; or his designee or contract security forces when authorized by the contract project officer) and in accordance with FEMA policy governing the possession of firearms.

§ 15.45 Penalties.

(a) Misconduct: Any misconduct will be processed and disposed of in accordance with FEMA/NETC policy or Instruction.

(b) Parking violations: Vehicles parked in violation of State law, FEMA or NETC Instruction shall be subject to towing at the owner's expense.

§ 15.46 Other Laws.

Nothing contained in this subpart shall be construed to abrogate any other Federal laws or any State and local laws and regulations applicable to the National Emergency Training Center premises. This subpart supplements the penal provisions of title 18, United States Code, relating to Crimes and Criminal Procedure, which apply without regard to the place of the offense and those penal provisions which apply in areas under the special maritime and territorial jurisdiction of the United States, as defined in 18 U.S.C. 7. However, the content of this subpart supersedes those provisions of State law which are made Federal criminal offenses by virtue of the Assimilated Crime Act (18 U.S.C. 13) to the extent that they are in conflict with this subpart. State and local criminal laws are applicable as such only to the extent that authority in that regard has been reserved to the State by the State consent or cession statute or vested in the State by Federal statute.

Dated: April 16, 1991.

Olin L. Greene,

Administrator, U.S. Fire Administration.

[FR Doc. 91-9880 Filed 4-26-91; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 90, and 97

[PR Docket No. 89-552; FCC 91-74]

Private Land Mobile Radio Services; Use of the 220-222 MHz Frequency Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Report and Order that amends part 90 of the rules to establish service rules and technical standards for the use of frequencies in the 220-222 MHz band. The adopted rules will provide eligible part 90 applicants with additional spectrum for their operational needs as well as foster the development of land mobile radio equipment that utilizes narrowband technology.

DATES: Except as indicated below, all rules adopted in this proceeding are effective May 29, 1991. 47 CFR 90.711 is effective May 1, 1991, and 47 CFR 90.713 is effective July 29, 1991.

FOR FURTHER INFORMATION CONTACT: John Borkowski or Ron Netro, Rules Branch, Private Radio Bureau, (202) 634-2443. For engineering or technical information, contact Eugene Thomson, (202) 634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, PR Docket No. 89-552, FCC 91-74, adopted March 14, 1991, and released April 17, 1991. The full text of this Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 230, 1919 M Street, NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, Washington, DC 20036, telephone (202) 452-1422.

Summary of Report and Order

1. The 2 MHz of spectrum available in this band is divided into 400 5 KHz-wide frequencies, paired to create 200 narrowband channels. Of the 200 channels, 60 are set aside for nationwide applicants. Of these 60 channels, 10 are set aside exclusively for Government use and 50 exclusively for non-Goverment use. Nationwide channels are divided into 5-channel blocks and 10-channel blocks. Of the 50 non-Government nationwide channels, 30 channels (two 10-channel blocks and two 5-channel blocks) are set aside for non-commercial applicants (licensees using the system for their own internal purposes only), and 20 channels (four 5-channel blocks) are set aside for commercial applicants (applicants that intend to operate their systems as private carriers providing communications services to others).

2. The 140 channels not dedicated to nationwide use are set aside for local use. All of these channels are available on a co-equal basis for Government and non-Government licensees. Of these 140 channels, 100 are set aside for trunked operations, 20 are set aside for data

operations (digital transmissions or analog non-voice transmissions), 10 are set aside for public safety/mutual aid use, and 10 do not have such use restrictions. The trunked channels are assigned in groups of 5 non-contiguous channels spaced 150 kHz (30 channels) apart. Ten of the 20 channels set aside for data operations are not immediately available because they may be allocated for public-safety uses in other on-going Commission proceedings.

3. All applications for licenses in this band will be granted on a first-come, first-served basis and may be filed on or after the second day after publication of a summary of this document in the **Federal Register.** Licenses will not be granted, however, until the first type-acceptance of equipment for land mobile use in the 220–222 MHz band. A single applicant may apply for one of each type of nationwide system for which it qualifies (*i.e.,* one non-Government commercial system, one 5-channel non-Government non-commercial system, one 10-channel non-Government non-commercial system, etc.), but may not initially be licensed for more than one commercial block and one non-commercial block. Nationwide applicants must submit a detailed plan for construction and operation of the nationwide system and must meet certain financial qualifications. Generally, non-nationwide applicants may not be authorized for more than one individual channel or trunked channel group in a geographic area. Individual channels may not be stacked to obtain a wideband channel. Non-nationwide applicants that seek more than one channel or system in the same geographic area must establish a strong showing of communications need for the additional channel(s) or system(s).

4. Same-day applications for nationwide channel blocks that exceed the number of blocks available in the relevant category and same-day applications for local channels in a geographic area that exceed the number available in the relevant category will be considered as mutually exclusive and resolved by lottery. Non-nationwide licenses will have a five-year license term and systems must be constructed and placed in operation within eight months of license grant. Nationwide licenses will have a ten-year license term and must be constructed and placed in operation according to a schedule of benchmarks at 2, 4, 6 and 10 years. Non-nationwide authorizations for systems that are not constructed or placed in operation within eight months, and nationwide authorizations for systems that do not meet their two-year or four-year construction benchmarks, cancel automatically. No systems in this band may be partially transferred or assigned; full transfer or assignment of a license is permitted, but only for nationwide systems that are 40 percent constructed or non-nationwide systems that are fully constructed. Applications may be filed only for primary land mobile uses, although fixed and paging uses ancillary to a licensee's land mobile operations will be permitted.

5. For each 5 kHz channel, a system will be authorized a maximum channel bandwidth of 4 kHz. Channels may not be stacked for wideband operation. All transmitter emissions must satisfy a single emissions mask. Except for nationwide assignments, co-channel frequency reuse will be 120 kilometers. Geographic separation will be required for certain systems with transmitting and receiving frequencies less than 200 kHz (40 channels) apart. The maximum base station facility permitted will be 500 watts effective radiated power at an antenna height of 150 meters. The effective radiated power authorized will be based on a sliding scale according to antenna height. Base station frequency tolerance will be ±0.00001%; mobile/portable frequency tolerance will be ±0.00015%.

Final Regulatory Flexibility Analysis

6. Pursuant to the Regulatory Flexibility Act of 1980, a final regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of this decision which may be viewed at the Commission's offices or obtained from its copy contractor.

Paperwork Reduction Act Statement

7. The rules adopted herein have been analyzed pursuant to the Paperwork Reduction Act of 1980. This analysis is contained in the full text of this decision.

List of Subjects

47 CFR Part 1

Communications common carriers, Penalties, Reporting and recordkeeping requirements, Radio.

47 CFR Part 90

Private land mobile radio services, 220–222 MHz narrowband frequencies, Radio.

47 CFR Part 97

Communication equipment, Radio, Satellites.

Amendatory Text

47 CFR part 1, 47 CFR part 90 and 47 CFR part 97 are amended as follows:

1. The authority citation for part 1 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

2. 47 CFR 1.1102 is amended by adding 6(a) (vii) and (viii) and 6(b) (vii) and (viii) and by adding a note C to read as follows:

Action	FCC form No.	Fee amount	Fee type code	Address
•	•	•	•	•
6. Land Mobile Radio Stations:				
a. New, Reinstatement, Modification and/or Renewal (per call sign):				
•	•	•	•	•
(vii) 220–222 MHz (Nationwide *only*—see Note C below).	FCC 574, FCC 155	35	PAL	Federal Communications Commission, 220–222 MHz Services, P.O. Box 358360, Pittsburgh, PA 15251–5360.
(viii) 220–222 MHz (Non-nationwide *only*).	FCC 574	35	PAL	Federal Communications Commission, 220–222 MHz Services, P.O. Box 358360, Pittsburgh, PA 15251–5360.
b. Assignments (per station):				
•	•	•	•	•
(vii) 220–222 MHz (Nationwide *only*—see Note C below).	FCC 574, FCC 155	35	PAL	Federal Communications Commission, 220–222 MHz Services, P.O. Box 358360, Pittsburgh, PA 15251–5360.
(viii) 220–222 MHz (Non-nationwide *only*).	FCC 574	35	PAL	Federal Communications Commission, 220–222 MHz Services, P.O. Box 358360, Pittsburgh, PA 15251–5360.
•	•	•	•	•

Note: C. The fee due for any application related to a nationwide 220–222 MHz system is calculated by multiplying the number of stations (call signs) by $35. For nationwide systems at 220–222 MHz, each frequency pair (channel) in each geographic location is a separate given a separate call sign.

3. The authority citation for part 90 is amended to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

4. 47 CFR 90.17 is amended by adding the frequency band 220–222 MHz to the Table in paragraph (b) between the entries for 173.39625 MHz and 450 to 470 MHz to read as follows:

§ 90.17 Local Government Radio Service.

* * * * *

(b) * * *

LOCAL GOVERNMENT RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
Megahertz:		
* * * * *		
220 to 222	Base and mobile	(4)
* * * * *		

5. 47 CFR 90.19 is amended by adding the frequency band 220–222 MHz to the Table in paragraph (d) between the entries for 173.075 MHz and 450–470 MHz to read as follows:

§ 90.19 Police Radio Service.

* * * * *

(d) * * *

POLICE RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
Megahertz:		
* * * * *		
220 to 222	Base and mobile	(4)
* * * * *		

6. 47 CFR 90.21 is amended by adding the frequency band 220–222 MHz to the Table in paragraph (b) between the entries for 170.150 MHz and 450–470 MHz to read as follows:

§ 90.21 Fire Radio Service.

* * * * *

(b) * * *

FIRE RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
Megahertz:		
* * * * *		
220 to 222	Base and mobile	(17)
* * * * *		

7. 47 CFR 90.23 is amended by adding the frequency band 220–222 MHz to the Table in paragraph (b) between the entries for 169–172 MHz and 450–470 MHz to read as follows:

§ 90.23 Highway Maintenance Radio Service.

* * * * *

(b) * * *

HIGHWAY MAINTENANCE RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
Megahertz:		
* * * * *		
220 to 222	Base and mobile	(19)
* * * * *		

8. 47 CFR 90.25 is amended by adding the frequency band 220–222 MHz to the Table in paragraph (b) between the entries for 172.375 MHz and 450–470 MHz to read as follows:

§ 90.25 Forestry-Conservation Radio Service.

* * * * *

(b) * * *

FORESTRY-CONSERVATION RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
Megahertz:		
* * * * *		
220 to 222	Base and mobile	(23)
* * * * *		

9. 47 CFR 90.53 is amended by adding the frequency band 220–222 MHz to the Table in paragraph (a) between the entries for 169–172 MHz and 450–470 MHz to read as follows:

§ 90.53 Frequencies available.

(a) * * *

SPPECIAL EMERGENCY RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
Megahertz:		
* * * * *		
220 to 222	Base and mobile	(8)
* * * * *		

10. 47 CFR 90.63 is amended by adding the frequency band 220–222 MHz to the Table in paragraph (c) between the entries for 216–220 MHz and 406–413 MHz to read as follows:

§ 90.63 Power Radio Service.

* * * * *

(c) * * *

POWER RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
Megahertz:		
* * * * *		
220 to 222	Base and mobile	(26).
* * * * *		

11. 47 CFR 90.65 is amended by adding the frequency band 220–222 MHz to the Table in paragraph (b) between the entries for 216–220 MHz and 406–413 MHz to read as follows:

§ 90.65 Petroleum Radio Service.

* * * * *

(b) * * *

PETROLEUM RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
Megahertz:		
* * * * *		
220 to 222	Base and mobile	(17).
* * * * *		

12. 47 CFR 90.67 is amended by adding the frequency band 220–222 MHz to the Table in paragraph (b) between the entries for 216–220 MHz and 406–413 MHz to read as follows:

§ 90.67 Forest Products Radio Service.

* * * * *

(b) * * *

FOREST PRODUCTS RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
Megahertz:		
* * * * *		
220 to 222	Base and mobile	(37).
* * * * *		

13. 47 CFR 90.69 is amended by adding the frequency band 220–222 MHz to the Table in paragraph (b) between the entries for 173.375 MHz and 806–821 MHz to read as follows:

§ 90.69 Motion Picture Radio Service.

* * * * *

(b) * * *

MOTION PICTURE RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
Megahertz:		
* * * * *		
220 to 222	Base and mobile	(13).
* * * * *		

14. 47 CFR 90.71 is amended by adding the frequency band 220–222 MHz to the Table in paragraph (b) between the entries for 173.375 MHz and 452.975 MHz to read as follows:

§ 90.71 Relay Press Radio Service.

* * * * *

(b) * * *

RELAY PRESS RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
Megahertz:		
* * * * *		
220 to 222	Base and mobile	(10).
* * * * *		

15. 47 CFR 90.73 is amended by adding the frequency band 220–222 MHz to the Table in paragraph (c) between the entries for 216–220 MHz and 406–413 MHz to read as follows:

§ 90.67 Special Industrial Radio Service.

* * * * *

(c) * * *

SPECIAL INDUSTRIAL RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
Megahertz:		
* * * * *		
220 to 222	Base and mobile	(37).
* * * * *		

16. 47 CFR 90.75 is amended by adding the frequency band 220–222 MHz to the Table in paragraph (b) between the entries for 216–220 MHz and 406–413 MHz to read as follows:

§ 90.75 Business Radio Service.

* * * * *

(b) * * *

BUSINESS RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
Megahertz:		
* * * * *		
220 to 222	Base and mobile	(44).
* * * * *		

17. 47 CFR 90.79 is amended by adding the frequency band 220–222 MHz to the Table in paragraph (c) between the entries for 216–220 MHz and 450–470 MHz to read as follows:

§ 90.79 Manufacturers Radio Service.

* * * * *

(c) * * *

MANUFACTURERS RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
Megahertz:		
* * * * *		
220 to 222	Base and mobile	(27).
* * * * *		

18. 47 CFR 90.81 is amended by adding the frequency band 220–222 MHz to the Table in paragraph (c) between the entries for 216–220 MHz and 450–470 MHz to read as follows:

§ 90.81 Telephone Maintenance Radio Service.

* * * * *

(c) * * *

TELEPHONE MAINTENANCE RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
Megahertz:		
* * * * *		
220 to 222	Base and mobile	(1).
* * * * *		

19. 47 CFR 90.89 is amended by adding the frequency band 220–222 MHz to the Table in paragraph (b) between the entries for 169–172 MHz and 450–470 MHz to read as follows:

§ 90.89 Motor Carrier Radio Service.

* * * * *

(b) * * *

MOTOR CARRIER RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
Megahertz:		
* * * * *		
220 to 222	Base and mobile	(22).
* * * * *		

20. 47 CFR 90.91 is amended by adding the frequency band 220–222 MHz to the Table in paragraph (b) between the entries for 169–172 MHz and 406–413 MHz to read as follows:

§ 90.91 Railroad Radio Service.

* * * * *

(b) * * *

RAILROAD RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
Megahertz:		
* * * * *		
220 to 222	Base and mobile	(20).
* * * * *		

21. 47 CFR 90.93 is amended by adding the frequency band 220–222 MHz to the Table in paragraph (b) between the entries for 169–172 MHz and 450–470 MHz to read as follows:

§ 90.93 Taxicab Radio Service.

* * * * *

(b) * * *

TAXICAB RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
Megahertz:		
* * * * *		
220 to 222.....	Base and mobile...	(16).
* * * * *		

22. 47 CFR 90.95 is amended by adding the frequency band 220–222 MHz to the Table in paragraph (c) between the entries for 169–172 MHz and 450–470 MHz to read as follows:

§ 90.95 Automobile Emergency Radio Service.

* * * * *

(c) * * *

AUTOMOBILE EMERGENCY RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
Megahertz:		
* * * * *		
220 to 222.....	Base and mobile...	(19).
* * * * *		

23. 47 CFR 90.17(c)(4), 90.19(e)(4), 90.53(b)(8), 90.65(c)(17), 90.81(d)(1), 90.21(c)(17), 90.23(c)(19), 90.25(c)(23), 90.63(d)(26), 90.67(c)(37), 90.69(c)(13), 90.71(c)(10), 90.73(d)(37), 90.75(c)(44), 90.79(d)(27), 90.89(c)(22), 90.91(c)(20), 90.93(c)(16) and 90.95(d)(19) are added, in each case to read as follows:

* * * * *

(__) (__) Subpart T contains rules for assignment of frequencies in the 220–222 MHz band.

* * * * *

24. 47 CFR 90.149 is amended by revising paragraph (a) and adding a new paragraph (c) to read as follows:

§ 90.149 License term.

(a) Except as indicated in paragraph (c) of this section, license for stations authorized under this part will be issued for a term not to exceed five years from the date of the original issuance, modification or renewal.

* * * * *

(c) Nationwide authorizations under subpart T of this part will be issued for a term not to exceed ten years from the date of the original issuance, modification or renewal.

25. 47 CFR 90.175 is amended by adding paragraph (f)(14) to read as follows:

§ 90.175 Frequency coordination requirements.

* * * * *

(f) * * *

(14) Applications for frequencies in the 220–222 MHz band.

26. 47 CFR 90.205(b) is amended by adding the 220–222 MHz band and limitation 12 to the table and revising the 220–470 entry to 222–470 to read as follows:

§ 90.205 Power.

* * * * *

(b) * * *

Frequency range (MHz)	Maximum output power (watts)	Maximum effective radiated power (ERP) (watts)
* * * * *		
220 to 222.....	—.....	500. (12)
222 to 470.....	(3 5) 350.....	—
* * * * *		

(12) Transmitter peak envelope power shall be used to determine ERP.

27. 47 CFR 90.209 is amended by revising paragraphs (b)(8) and (j) and adding paragraph (l) to read as follows:

§ 90.209 Bandwidth limitations.

* * * * *

(b) * * *

(8) For narrowband operations on 5 kHz channels in the 150–170 MHz band, the maximum authorized bandwidth shall be 3.6 kHz. For narrowband operations on 5 kHz channels in the 220–222 MHz band, the maximum authorized bandwidth shall be 4 kHz. Assignable frequencies represent the center of the authorized bandwidth.

* * * * *

(j) Except as indicated in paragraph (l) of this section, for transmitters that operate on channels spaced 5 kHz apart (see § 90.271 of this part), the power of any emission shall be attenuated below the peak envelope power (P) in accordance with the following schedule:

* * * * *

(l) For transmitters that operate on 5 kHz channel assignments in the 220–222 MHz frequency band, the power of any emission shall be attenuated below the power of the highest emission contained within the authorized channel bandwidth in accordance with the following schedule:

(1) On any frequency within the authorized bandwidth: Zero dB.

(2) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 2 kHz up to and including 3.75 kHz: The lesser of $30+20(f_d-2)$ dB, or $55+10$ log (P) where (P) is the highest emission (watts) of the transmitter inside the authorized bandwidth, or 65 dB.

(3) On any frequency beyond 3.75 kHz removed from the center of the authorized bandwidth: At least $55+10$ log (P) dB.

(4) The resolution bandwidth of the instrumentation used to measure the emission power shall be 100 Hz for measuring emissions up to and including 250 kHz from the edge of the authorized bandwidth, and 10 kHz for measuring emissions more than 250 kHz from the edge of the authorized bandwidth. If a video filter is used, its bandwidth shall not be less than the resolution bandwidth. The power level of the highest emission within the channel, to which the attenuation is referenced, shall be remeasured for each change in resolution bandwidth.

(5) Emission power (P) shall be measured in peak values.

28. 47 CFR 90.211(d)(2) is revised to read as follows:

§ 90.211 Modulation requirements.

* * * * *

(d) * * *

(2) Transmitters subject to the emission limitations of paragraphs (f), (g), (h), (j), or (l) of § 90.209 of this part shall be exempt from the audio low-pass filter requirements of this section, provided that transmitters used for digital emissions must be type accepted with the digital modulating signal or signals specified by the manufacturer. The type acceptance application shall contain such information as may be necessary to demonstrate that the transmitter complies with the emission limitations specified in paragraphs (f), (g), (h), (j), or (l) of § 90.209 of this part.

§ 90.213 [Amended]

29. 47 CFR § 90.213 is amended by adding footnote 18 to the 50–450 MHz band in the Frequency Tolerance Table to read:

(18) In the 220–222 MHz band, base stations shall maintain the carrier frequency to within ±0.00001 per cent, and mobiles shall maintain the carrier frequency to within ±0.000015 per cent. Mobile units may utilize synchronizing signals from associated base stations to achieve the specified carrier stability.

* * * * *

30. 47 CFR 90.233 is amended by revising paragraph (c) read as follows:

§ 90.233 Base/mobile non-voice operations.

* * * * *

(c) Provisions of this section do not apply to authorizations for paging, telemetry, radiolocation, AVM, radioteleprinter, radio call box operations, or authorizations granted pursuant to subpart T of this part.

31. 47 CFR 90.238 is amended by adding paragraph (f) to read as follows:

§ 90.238 Telemetry operations.

* * * * *

(f) 220–222 MHz as available under subpart T of this part.

* * * * *

32. 47 CFR 90.243 is amended by revising paragraph (a) in its entirety to read as follows:

§ 90.243 Mobile relay stations.

(a) Mobile relay stations under this part may be authorized only as follows:

(1) On frequencies below 450 MHz, except the 220–222 MHz band, mobile relay stations may be authorized within the contiguous 48 states to operate only in the Police, Fire, Local Government, Highway Maintenance, Forestry Conservation, Power, Petroleum, Forest Products, Manufacturers, Telephone Maintenance, and Railroad Radio Services.

(2) On frequencies below 450 MHz, except the 220–222 MHz band, mobile relay stations may be authorized outside the contiguous 48 states to operate only in the Police, Fire, Local Government, Highway Maintenance, Forestry Conservation, Power, Petroleum, Forest Products, Manufacturers, Telephone Maintenance, Railroad Radio, Business and Special Industrial Radio Services.

(3) Mobile relay operations will be authorized in the 220–222 MHz band.

(4) Mobile relay stations will be authorized on frequencies between 450 MHz and 470 MHz in all of the services governed by this part except for the Radiolocation Service.

(5) Mobile relay stations will be authorized on frequencies between 470 MHz and 512 MHz in all of the services that have been allocated such frequencies.

* * * * *

33. 47 CFR 90.419 is amended by revising paragraph (a) to read as follows:

§ 90.419 Points of communication.

* * * * *

(a) Base stations licensed under subpart T of this part and those in the Public Safety and Special Emergency Radio Services that operate on frequencies below 450 MHz, may communicate on a secondary basis with other base stations, operational fixed stations, or fixed receivers authorized in these services.

* * * * *

34. 47 CFR 90.425 is amended by adding paragraph (d)(8) to read as follows:

§ 90.425 Station identification.

* * * * *

(d) * * *

(8) It is a base or mobile station in the 220–222 MHz band authorized to operate on a nationwide basis in accordance with subpart T of this part.

35. 47 CFR 90.555 is amended by adding the 220–222 MHz frequency band to the combined frequency list in paragraph (b) to read as follows:

§ 90.555 Combined frequency listing.

* * * * *

(b) Combined frequency list.

Frequency	Services	Special limitations
*	* *	* *
220–222	All Svcs. Exc. RS.	See subpart T.
*	* *	* *

36. 47 CFR part 90 is amended by adding a new subpart T to read as follows:

Subpart T—Regulations Governing Licensing and Use of Frequencies in the 220–222 MHz Band

Sec.

§ 90.701 Scope.

Frequencies in the 220–222 MHz band are available for land mobile use for both Government and non-Government operations. This subpart sets out the regulations governing the licensing and operation of non-Government systems operating in the 220–222 MHz band. It includes eligibility requirements, application procedures, and operational and technical standards for stations licensed in these bands. The rules in this subpart are to be read in conjunction with the applicable requirements contained elsewhere in this part; however, in case of conflicts, the provisions of this subpart shall govern with respect to licensing and operation in this frequency band.

§ 90.703 Eligibility.

The following persons are eligible for licensing in the 220–222 MHz band.

(a) Any person eligible for licensing under subparts B, C, D or E of this part.

(b) Any person proposing to provide communications service to any person eligible for licensing under subparts B, C, D or E of this part on a not-for-profit, cost-shared basis.

(c) Any person, except wire line telephone common carriers, eligible under this part proposing to provide on a commercial basis, station and ancillary facilities for the use of individuals, federal government agencies and persons eligible for licensing under subparts B, C, D or E of this part.

§ 90.705 Forms to be used.

Applications for all radio facilities under this subpart must be prepared on FCC Form 574 and must be submitted or filed in accordance with § 90.127 of this part.

§ 90.709 Special limitations on amendment of applications and on assignment or transfer of authorizations licensed under this subpart.

(a) Except as indicated in paragraph (b) of this section, the Commission will not consent to the following:

(1) Any request to amend an application so as to substitute a new entity as the applicant;

(2) Any application to assign or tranfer a license for a non-nationwide system prior to the completion of construction of facilities; or

(3) Any application to transfer or assign a license for a nationwide system before the licensee has constructed at least 40% of the proposed system pursuant to the provisions of § 90.725(a) of this part.

(b) The Commission will grant the applications described in paragrpah (a) of this section if:

(1) the request to amend an application or to transfer or assign a license does not involve a substantial change in the ownership or control or the applicant; or

(2) The changes in the ownership or control of the applciant are involuntary due to the original applicant's

insolvency, bankruptcy, incapacity, or death.

(c) The assignee or transferee of a nationwide system is subject to the construction benchmarks and reporting requirements of § 90.725(a) of this part. The assignee or transferee of a nationwide system is not subject to the entry criteria described in § 90.713 of this part.

(d) A licensee may not partially assign any authorization granted pursuant to the subpart.

§ 90.711 Processing of applications.

(a) Applications will be processed on a first-come, first-served basis. When multiple applications are filed on the same day for frequencies in the same geographic area, and insufficient frequencies are available to grant all applications (*i.e.*, if all applications were granted, violation of the provisions of § 90.723(f) of this subpart would result), or when multiple applications for nationwide systems are filed on the same day for a number of systems in excess of those available in the relevant category (10-channel non-commercial, 5-channel non-commercial, or 5-channel commercial), these applications will be considered mutually exclusive and will be subject to lottery proceeding pursuant to § 1.972 of this chapter.

(b) All applications will first be considered to determine whether they are substantially complete and acceptable for filing. If so, they will be assigned a file number and put in pending status. If not, they will be dismissed.

(c) Except as otherwise provided in this section, all applications in pending status will be processed in the order in which they are received, determined by the date on which the application was received by the Commission in its Gettysburg, Pennsylvania office (or the address set forth at § 1.1102 of this chapter for applications requiring the fees established by part 1, subpart G of this chapter).

(d) Each application that is accepted for filing will then be reviewed to determine whether it can be granted. Frequencies will be assigned by the Commission pursuant to the provisions of § 90.723 of this part.

(e) An application which is dismissed will lose its place in the processing line.

(f) If an application is returned for correction and resubmitted and received by the Commission within 60 days from the date on which it was returned to the applicant, it will retain its place in the processing line. If it is not received within 60 days, it will lose its place in the processing line.

§ 90.713 Entry criteria.

(a) As set forth in § 90.717 of this part, two blocks of ten and six blocks of five contiguous channels have been set aside for exclusive assignments for non-Government use on a nationwide basis. Each application for a nationwide channel block must include:

(1) Certification that, within ten years of receiving a license, the applicant will construct a minimum of one base station in at least 70 different geographic areas; that base stations will be located in a minimum of 28 of the 100 urban areas listed in § 90.741 of this part; that each base station in the ten large urban areas designated in § 90.725(h) of this part will have all assigned nationwide channels constructed and in operation (regularly interacting with mobile and/or portable units); and that all other base stations will have a minimum of five of the assigned nationwide channels constructed and in operation;

(2) Certification that the applicant will meet the construction requirements set forth in § 90.725 of this part;

(3) A ten year schedule detailing plans for construction of the proposed system;

(4) An itemized estimate of the cost of constructing 40 percent of the system and operating the system during the first four years of the license term; and

(5) Proof that the applicant has sufficient financial resources to construct 40 percent of the system and operate the proposed system for the first four years of the license term; *i.e.*, that the applicant has net current assets sufficient to cover estimated costs or a firm financial commitment sufficient to cover estimated costs.

(b) Applicants relying on personal or internal resources for the showing required in paragraph (a) of this section must submit independently audited financial statements certified within one year of the date of the application showing net current assets sufficient to meet estimated construction and operating costs. They must also submit an independently audited balance sheet dated no more than sixty days before the date of the application showing the continued availability of sufficient net current assets.

(c) Applicants submitting evidence of a firm financial commitment for the showing required in paragraph (a) of this section must obtain the commitment from a *bona fide* commercially acceptable source, *e.g.*, a state or federally chartered bank or savings and loan institution, other recognized financial institution, the financial arm of a capital equipment supplier, or an investment banking house. If the lender is a not a state or federally chartered bank or savings and loan institution, other recognized financial institution, the financial arm of a capital equipment supplier, or an investment banking house, the lender must also demonstrate that it has funds available to cover the total commitments it has made. The lender's commitment shall contain a statement that the lender:

(1) Has examined the financial condition of the applicant including an audited financial statement, and has determined that the applicant is creditworthy;

(2) Has examined the financial viability of the proposed system for which the applicant intends to use the commitment; and

(3) Is willing to provide a sum to the applicant sufficient to cover the realistic and prudent estimated costs of construction of 40% of the system and operation of the system for the first four years of the license term.

(d) An applicant in a geographic area for frequencies in the 220–222 MHz band may not have any interest in another pending application in the same geographic area for frequencies in the same category (trunked, individual, individual data, public safety/mutual aid) in that band. An applicant for a nationwide system in the 220–222 MHz band may not have any interest in another pending application for a nationwide system in the same category (10-channel non-commercial, 5-channel non-commercial, 5-channel commercial) in that band.

§ 90.715 Frequencies available.

(a) The following table indicates the channel designations of frequencies available for assignment to eligible applicants under this subpart. Frequencies shall be assigned in pairs, with base station frequencies taken from the 220–221 MHz band with corresponding mobile and control station frequencies being 1 MHz higher and taken from the 221–222 MHz band. Only the lower half of the frequency pair(s) is listed in the table.

TABLE OF 220–222 MHZ CHANNEL DESIGNATIONS

Channel No.	Base frequency (MHz)
1	220.0025
2	.0075
3	.0125
4	.0175
5	.0225
6	.0275
7	.0325
8	.0375
9	.0425
10	.0475
11	.0525
12	.0575

TABLE OF 220–222 MHz CHANNEL DESIGNATIONS—Continued

Channel No.	Base frequency (MHz)
13	.0625
14	.0675
15	.0725
16	.0775
17	.0825
18	.0875
19	.0925
20	.0975
21	220.1025
22	.1075
23	.1125
24	.1175
25	.1225
26	.1275
27	.1325
28	.1375
29	.1425
30	.1475
31	.1525
32	.1575
33	.1625
34	.1675
35	.1725
36	.1775
37	.1825
38	.1875
39	.1925
40	.1975
41	220.2025
42	.2075
43	.2125
44	.2175
45	.2225
46	.2275
47	.2325
48	.2375
49	.2425
50	.2475
51	.2525
52	.2575
53	.2625
54	.2675
55	.2725
56	.2775
57	.2825
58	.2875
59	.2925
60	.2975
61	220.3025
62	.3075
63	.3125
64	.3175
65	.3225
66	.3275
67	.3325
68	.3375
69	.3425
70	.3475
71	.3525
72	.3575
73	.3625
74	.3675
75	.3725
76	.3775

TABLE OF 220–222 MHz CHANNEL DESIGNATIONS—Continued

Channel No.	Base frequency (MHz)
77	.3825
78	.3875
79	.3925
80	.3975
81	220.4025
82	.4075
83	.4125
84	.4175
85	.4225
86	.4275
87	.4325
88	.4375
89	.4425
90	.4475
91	.4525
92	.4575
93	.4625
94	.4675
95	.4725
96	.4775
97	.4825
98	.4875
99	.4925
100	.4975
101	220.5025
102	.5075
103	.5125
104	.5175
105	.5225
106	.5275
107	.5325
108	.5375
109	.5425
110	.5475
111	.5525
112	.5575
113	.5625
114	.5675
115	.5725
116	.5775
117	.5825
118	.5875
119	.5925
120	.5975
121	220.6025
122	.6075
123	.6125
124	.6175
125	.6225
126	.6275
127	.6325
128	.6375
129	.6425
130	.6475
131	.6525
132	.6575
133	.6625
134	.6675
135	.6725
136	.6775
137	.6825
138	.6875
139	.6925
140	.6975

TABLE OF 220–222 MHz CHANNEL DESIGNATIONS—Continued

Channel No.	Base frequency (MHz)
141	220.7025
142	.7075
143	.7125
144	.7175
145	.7225
146	.7275
147	.7325
148	.7375
149	.7425
150	.7475
151	.7525
152	.7575
153	.7625
154	.7675
155	.7725
156	.7775
157	.7825
158	.7875
159	.7925
160	.7975
161	220.8025
162	.8075
163	.8125
164	.8175
165	.8225
166	.8275
167	.8325
168	.8375
169	.8425
170	.8475
171	.8525
172	.8575
173	.8625
174	.8675
175	.8725
176	.8775
177	.8825
178	.8875
179	.8925
180	.8975
181	220.9025
182	.9075
183	.9125
184	.9175
185	.9225
186	.9275
187	.9325
188	.9375
189	.9425
190	.9475
191	.9525
192	.9575
193	.9625
194	.9675
195	.9725
196	.9775
197	.9825
198	.9875
199	.9925
200	220.9975

(b) The 200 channels are divided into three sub-bands as follows:

Channel No.	Sub-band	Frequencies (MHz)
1–40	A	220.0025–220.1975/221.0025–221.1975
41–160	C	220.2025–220.7975/221.2025–221.7975
161–200	B	220.8025–220.9975/221.8025–221.9975

§ 90.717 Channels available for nationwide systems in the 220–222 MHz band.

Channels 51–60 and 141–150 are 10-channel blocks available to applicants eligible in all Part 90 services only for nationwide non-commercial systems. Channels 81–85 and 86–90 are 5-channel blocks available to applicants eligible in all Part 90 services only for nationwide non-commercial systems. The term "non-commercial system" is defined as a system that will be used only for a licensee's internal use. Channels 21–25, 26–30, 151–155, and 156–160 are 5-channel blocks available to non-Government applicants only for nationwide commercial systems. Channels 111–115 and 116–120 are 5-channel blocks available for Government nationwide use only.

§ 90.719 Individual channels available for assignment in the 220–222 MHz band.

Channels 171–200 are available to both Government and non-Government applicants, and may be assigned singly or in contiguous channel groups. Channels 171–180 are available for any use consistent with this subpart. Channels 181–200 are set aside for data only operations until March 31, 2000. The term "data", for purposes of this subpart, includes the transmission of text, control codes, and other information typical of machine-to-machine communications. Digitized voice signals are considered data signals under this subpart.

Note: Channels 181–185 and 196–200 are indefinitely reserved until further Commission action, and are not currently available for assignment or use.

§ 90.720 Channels available for public safety/mutual aid.

(a) Part 90 licensees whose licenses reflect a two-letter radio service code beginning with the letter "P" (except for "PS") are authorized by this rule to use mobile and/or portable units on Channels 161–170 throughout the United States, its territories, and possessions to transmit:

(1) Communications relating to the immediate safety of life or

(2) Communications to facilitate interoperability between public safety entities.

(b) Any entity eligible to obtain a license under subpart B of this part is also eligible to obtain a license for base/mobile operations on Channels 161–170. Base/mobile or base/portable communications on these channels that do not relate to the immediate safety of life or to communications interoperability between public safety entities may only be conducted on a secondary, non-interference basis to such communications.

§ 90.721 Channels available for trunked systems in the 220–222 MHz band.

The channel groups listed in the following Table are available to both Government and non-Government applicants for trunked operations or operations of equivalent or greater efficiency for non-commercial or commercial operations.

TABLE—TRUNKED CHANNEL GROUPS

Group No.	Channel Nos.
1	1–31–61–91–121
2	2–32–62–92–122
3	3–33–63–93–123
4	4–34–64–94–124
5	5–35–65–95–125
6	6–36–66–96–126
7	7–37–67–97–127
8	8–38–68–98–128
9	9–39–69–99–129
10	10–40–70–100–130
11	11–41–71–101–131
12	12–42–72–102–132
13	13–43–73–103–133
14	14–44–74–104–134
15	15–45–75–105–135
16	16–46–76–106–136
17	17–47–77–107–137
18	18–48–78–108–138
19	19–49–79–109–139
20	20–50–80–110–140

§ 90.723 Selection and assignment of frequencies.

(a) Applications for frequencies in the 220–222 MHz band shall specify the number of frequencies requested and whether their intended use is for 5- or 10-channel nationwide systems, commercial or non-commercial use, 5-channel trunked systems, public safety/mutual aid use, individual data/voice use, or individual data only use. All frequencies in this band will be assigned by the Commission.

(b) Channels will be assigned pursuant to §§ 90.717, 90.719, 90.720 and 90.721 of this part.

(c) Applicants will be assigned only the number of channels justified to meet their requirements. Except for the 10-channel nationwide assignments, the maximum number of frequencies that will be assigned to an applicant at any one time is five.

(d) Base station receivers utilizing channels assigned from Sub-band A as designated in § 90.715(b) of this part will be geographically separated from those base station transmitters utilizing channels removed 200 kHz or less and assigned from Sub-band B as follows:

GEOGRAPHIC SEPARATION OF SUB-BAND A BASE STATION RECEIVERS AND SUB-BAND B BASE STATION TRANSMITTERS

Separation distance (kilometers)	Effective radiated power (watts)[1]
0.0–0.3	([2])
0.3–0.5	5
0.5–0.6	10
0.6–0.8	20
0.8–2.0	25
2.0–4.0	50
4.0–5.0	100
5.0–6.0	200
Over 6.0	500

[1] Transmitter peak envelope power shall be used to determine effective radiated power.

[2] Stations separated by 0.3 km or less shall not be authorized. This table does not apply to the low-power mobile data channels 196–200. See § 90.729(c) of this part.

(e) A mobile station is authorized to transmit on any frequency assigned to its associated base station (mobile units not associated with base stations (see § 90.720(a) of this part must operate on "mobile" channels).

(f) Except for nationwide assignments, the separation of co-channel base stations shall be 120 kilometers. Shorter separations will be considered on a case-by-case basis upon submission of a technical analysis indicating that at least 10 dB protection will be provided to an existing station's 38 dBu signal level contour.

§ 90.725 Construction requirements.

(a) Licensees granted nationwide authorizations will be required to construct base stations having a minimum of five assigned nationwide channels (or, for ten-channel nationwide systems, ten assigned channels in the ten large areas listed in paragraph (h) of this section) and place those base stations in operation as follows:

(1) In at least 10 percent of the geographic areas designated in the application within two years of initial license grant, including base stations in at least seven urban areas listed in § 90.741 of this part;

(2) In at least 40 percent of the geographic areas designated in the application within four years of initial license grant, including base stations in at least 28 urban areas listed in § 90.741 of this part;

(3) In at least 70 percent of the geographic areas designated in the application within six years of initial license grant, including base stations in at least 28 urban areas listed in § 90.741 of this part;

(4) In all geographic areas designated in the application within ten years of initial license grant, including base

stations in at least 28 urban areas listed in § 90.741 of this part.

(b) Licensees not meeting the two and four year criteria shall lose the entire authorization, but will be permitted a six month period to convert the system to non-nationwide channels, if such channels are available.

(c) Licensees not meeting the six and ten year criteria shall lose the authorizations for the facilities not constructed, but will retain exclusivity for constructed facilities.

(d) Each nationwide licensee must file a system progress report on or before the anniversary date of the grant of its license after 2, 4, 6 and 10 years, demonstrating compliance with the relevant construction benchmark criteria. This progress report must include:

(1) An overall status report of the system, that must include, but need not be limited to:

(i) A list of all sites at which base stations have been constructed, with antenna heights and effective radiated power specified for each site;

(ii) A list of all other known base station sites at which construction has not been completed; and

(iii) A construction and operational schedule for the next five-year period, including any known changes to the plan for construction and operation submitted with the licensee's original application for the system.

(2) An analysis of the system's compliance with the requirements of paragraph (a) of this section, with documentation to support representations of completed construction, including, but not limited to:

(i) Equipment purchase orders and contracts;

(ii) Lease or purchase contracts relating to antenna site arrangements;

(iii) Equipment and antenna identification (serial) numbers; and

(iv) Service agreements and visits.

(e) Beginning with its second license term, each nationwide licensee must file a progress report once every five years on the anniversary date of the grant of the first renewal of its authorization, including the information required by paragraph (b)(1) of this section.

(f) Licensees authorized non-nationwide systems must construct their systems (*i.e.*, have all specified base stations constructed with all channels) and place their systems in operation within eight months of the initial license grant date. Authorizations for systems not constructed and placed in operation within eight months from the date of initial license grant cancel automatically.

(g) A licensee that loses authorization for some or all of its channels due to failure to meet construction deadlines or benchmarks may not reapply for nationwide channels in the same category or for non-nationwide channels in the same category in the same geographic area for one year from the date the Commission takes final action affirming that those channels have been cancelled.

(h) Base stations of 10-channel nationwide systems must be fully constructed (*i.e.*, must have all 10 channels) to be counted towards the benchmark criteria in paragraph (a) of this section if they are located in any of the ten large urban areas listed in the following Table (base stations are considered located in the following ten large urban areas if they are within 60 kilometers of the coordinates listed:

TABLE

Large urban area	North longitude			West latitude		
	°	′	″	°	′	″
New York, New York—Northeastern New Jersey	40	45	06	73	59	39
Los Angeles—Long Beach, California	34	03	15	118	14	28
Chicago, Illinois—Northwestern Indiana	41	52	28	87	38	22
Philadelphia, Pennsylvania—New Jersey	39	56	58	75	09	21
Detroit, Michigan	42	19	48	83	02	57
Boston, Massachusetts	42	21	24	71	03	25
San Francisco—Oakland, California	37	46	39	122	24	40
Washington, DC—Maryland—Virginia	38	53	51	77	00	33
Dallas—Forth Worth, Texas	32	47	09	96	47	37
Houston, Texas	29	45	26	95	21	37

§ 90.727 Extended implementation schedules.

Except for nationwide and commercial systems, a period of up to three (3) years may be authorized for constructing and placing a system in operation if:

(a) The applicant submits justification for an extended implementation period. The justification must include reasons for requiring an extended construction period, the proposed construction schedule (with milestones), and must show either that:

(1) The proposed system will serve a large fleet of mobile units and will involve a multi-year cycle for its planning, approval, funding, purchase, and construction; or

(2) The proposed system will require longer than 12 months to place in operation because of its purpose, size, or complexity; or

(3) The proposed system is to be part of a coordinated or integrated area-wide system which will require more than 12 months to construct; or

(4) The applicant is a local governmental agency and demonstrates that the government involved is required by law to follow a multi-year cycle for planning, approval, funding, and purchasing the proposed system.

(b) Authorizations under this section are conditioned upon the licensee's compliance with the submitted extended implementation schedule. Failure to meet the schedule will result in loss of authorizations for facilities not constructed.

§ 90.729 Limitations on power and antenna height.

(a) The permissible effective radiated power (ERP) with respect to antenna heights shall be determined from the following Table. These are maximum values and applicants are required to justify power levels requested.

ERP VS. ANTENNA HEIGHT TABLE

Antenna height above average terrain (HAAT), meters	Effective radiated power, watts [1]
Up to 150	500
150 to 225	250
225 to 300	125
300 to 450	60
450 to 600	30
600 to 750	20
750 to 900	15
900 to 1050	10
Above 1050	5

[1] Transmitter PEP shall be used to determine ERP.

(b) The maximum permissible ERP for mobile units is 50 watts. Portable units are considered as mobile units.

(c) Channels 196–200 are limited to 2 watts ERP and a maximum antenna height of 20 feet/6.1 meters above ground.

§ 90.731 Restrictions on operational-fixed stations.

(a) Except for control stations, operational-fixed stations will not be authorized in the 220–222 MHz band. Licensees may utilize their authorized frequencies for fixed signaling in accordance with § 90.235 of this part.

(b) Control stations associated with one or more mobile relay stations will be authorized only on the assigned frequency of the associated mobile station. Use of a mobile service frequency by a control station of a mobile relay system is subject to the condition that harmful interference shall not be caused to stations of licensees authorized to use the frequency for mobile service communications.

§ 90.733 Permissible operations.

(a) Systems authorized in the 220–222 MHz band may be used:

(1) Only for base/mobile and mobile relay transmissions on a primary basis, and fixed voice, signaling and paging transmissions ancillary to land mobile use. Fixed-only and paging-only operations are not permitted in this band.

(2) Only by persons who are eligible for facilities under either this subpart or in the radio services included in subparts B, C, D, or E of this part.

(3) Only for the transmission of messages or signals permitted in the services in which the licensees are eligible.

(b) See § 90.720 of this part for permissible operations on mutual aid channels.

(c) When two or more contiguous channels are authorized to a single licensee (up to a 10-channel nationwide block), more than a single emission may be utilized within the authorized bandwidth. In such cases, the frequency stability requirements of § 90.213 of this part shall not apply, but the out-of-band emission limits of § 90.209(1) of this part shall be met.

(d) Licensees of non-commercial nationwide systems that have constructed 40 percent of their systems may lease excess capacity of their systems as private carriers.

§ 90.735 Station identification.

(a) Except for nationwide systems authorized in the 220–222 MHz band, station identification is required pursuant to § 90..425 of this part.

(b) Trunked systems shall employ an automatic device to transmit the call sign of the base station at 30 minute intervals. The identification shall be made on the lowest frequency in the base station trunked group assigned to the licensee. If this frequency is in use at the time identification is required, the identification may be made at the termination of the communication in progress on this frequency.

(c) Station identification may be by voice or International Morse Code. If the call sign is transmitted in International Morse Code, it must be at a rate of between 15 to 20 words per minute, and by means of tone modulation of the transmitter, with the tone frequency being between 800 and 1000 hertz.

(d) Data transmissions (see § 90.719 of this part) may also be identified by data transmission of the station call sign. A licensee that identifies its station in this manner must provide the Commission, upon its request, information (such as digital codes and algorithms) sufficient to decipher the data transmission to ascertain the call sign transmitted.

§ 90.737 Supplemental reports required of licensees.

(a) Licensees of nationwide systems must submit progress reports pursuant to § 90.725(d) of this part.

(b) Licensees offering service on a commercial basis must maintain records of the names and addresses of each customer and the dates that service commenced and terminated. These records must be made available to the Commission upon request. Such licensees must report at the time of license renewal the number of mobile units being served.

(c) Non-commercial trunked system licensees must report at the time of license renewal the number of mobile units being served.

(d) Except for licensees of nationwide systems, all licensees must report whether construction of the facility has been completed within eight months of the date of grant of their respective licenses.

(e) All reports must be filed with the Land Mobile Branch, Licensing Division, Private Radio Bureau, Gettysburg, PA 17326.

§ 90.739 Number of systems authorized in a geographical area.

No licensee will be authorized more than one system in the 220–222 MHz band in a single category (i.e., one non-commercial nationwide system [either 5 or 10-channel], one commercial nationwide system, one 5-channel trunked system, one data-only local system of 1–5 channels, one unrestricted non-trunked local system of 1-5 channels, or one public safety/mutual aid local system of 1-5 channels) within 64 kilometers (40 miles) of an existing system authorized to that licensee in the same category, unless the licensee can demonstrate that the additional system is justified on the basis of its communications requirements.

§ 90.741 Urban areas for nationwide systems.

Licensees of nationwide systems must construct base stations in a minimum of 28 of the urban areas listed in the following Table within ten years of initial license grant. A base station is considered to be within one of the listed urban areas if it is within 60 kilometers of the specified coordinates.

TABLE

Urban Area	North Latitude			West Longitude		
	°	'	"	°	'	"
New York, New York—Northeastern New Jersey	40	45	06	73	59	39
Los Angeles-Long Beach, California	34	03	15	118	14	28

TABLE—Continued

Urban Area	North Longitude			West Latitude		
	°	'	"	°	'	"
Chicago, Illinois—Northwestern Indiana	41	52	28	87	38	22
Philadelphia, Pennsylvania/New Jersey	39	56	58	75	09	21
Detroit, Michigan	42	19	48	83	02	57
Boston, Massachusetts	42	21	24	71	03	25
San Francisco-Oakland, California	37	46	39	122	24	40
Washington, DC/Maryland/Virginia	38	53	51	77	00	33
Dallas-Fort Worth, Texas	32	47	09	96	47	37
Houston, Texas	29	45	26	95	21	37
St. Louis, Missouri/Illinois	38	37	45	90	12	22
Miami, Florida	25	46	37	80	11	32
Pittsburgh, Pennsylvania	40	26	19	80	00	00
Baltimore, Maryland	39	17	26	76	36	45
Minneapolis-St. Paul, Minnesota	44	58	57	93	15	43
Cleveland, Ohio	41	29	51	81	41	50
Atlanta, Georgia	33	45	10	84	23	37
San Diego, California	32	42	53	117	09	21
Denver, Colorado	39	44	58	104	59	22
Seattle-Everett, Washington	47	36	32	122	20	12
Milwaukee, Wisconsin	43	02	19	87	54	15
Tampa, Florida	27	56	58	82	27	25
Cincinnati, Ohio/Kentucky	39	06	07	84	30	35
Kansas City, Missouri/Kansas	39	04	56	94	35	20
Buffalo, New York	42	52	52	78	52	21
Phoenix, Arizona	33	27	12	112	04	28
San Jose, California	37	20	16	121	53	24
Indianapolis, Indiana	39	46	07	86	09	46
New Orleans, Louisiana	29	56	53	90	04	10
Portland, Oregon/Washington	45	31	06	122	40	35
Columbus, Ohio	39	57	47	83	00	17
Hartford, Connecticut	41	46	12	72	40	49
San Antonio, Texas	29	25	37	98	29	06
Rochester, New York	43	09	41	77	36	21
Sacramento, California	38	34	57	121	29	41
Memphis, Tennessee/Arkansas/Mississippi	35	08	46	90	03	13
Louisville, Kentucky/Indiana	38	14	47	85	45	49
Providence-Pawtucket-Warwick, RI/MA	41	49	32	71	24	41
Salt Lake City, Utah	40	45	23	111	53	26
Dayton, Ohio	39	45	32	84	11	43
Birmingham, Alabama	33	31	01	86	48	36
Bridgeport, Connecticut	41	10	49	73	11	22
Norfolk-Portsmouth, Virginia	36	51	10	76	17	21
Albany-Schenectady-Troy, New York	42	39	01	73	45	01
Oklahoma City, Oklahoma	35	28	26	97	31	04
Nashville-Davidson, Tennessee	36	09	33	86	46	55
Toledo, Ohio/Michigan	41	39	14	83	32	39
New Haven, Connecticut	41	18	25	72	55	30
Honolulu, Hawaii	21	19	00	157	52	00
Jacksonville, Florida	30	19	44	81	39	42
Akron, Ohio	41	05	00	81	30	44
Syracuse, New York	43	03	04	76	09	14
Worcester, Massachusetts	42	15	37	71	48	17
Tulsa, Oklahoma	36	09	12	95	59	34
Allentown-Bethlehem-Easton, PA/NJ	40	36	11	75	28	06
Richmond, Virginia	37	32	15	77	26	09
Orlando, Florida	28	32	42	81	22	38
Charlotte, North Carolina	35	13	44	80	50	45
Springfield-Chicopee-Holyoke, MA/CT	42	06	21	72	35	32
Grand Rapids, Michigan	42	58	03	85	40	13
Omaha, Nebraska/Iowa	41	15	42	95	56	14
Youngstown-Warren, Ohio	41	05	57	80	39	02
Greenville, South Carolina	34	50	50	82	24	01
Flint, Michigan	43	00	50	83	41	33
Wilmington, Delaware/New Jersey/Maryland	39	44	46	75	32	51
Raleigh-Durham/North Carolina	35	46	38	78	38	21
West Palm Beach, Florida	26	42	36	80	03	07
Oxnard-Simi Valley-Ventura, California	34	12	00	119	11	00
Fresno, California	36	44	12	119	47	11
Austin, Texas	30	16	09	97	44	37
Tucson, Arizona	32	13	15	110	58	08
Lansing, Michigan	42	44	01	84	33	15
Knoxville, Tennessee	35	57	39	83	55	07
Baton Rouge, Louisiana	30	26	58	91	11	00
El Paso, Texas	31	45	36	106	29	11
Tacoma, Washington	47	14	59	122	26	15
Mobile, Alabama	30	41	36	88	02	33
Harrisburg, Pennsylvania	40	15	43	76	52	59
Albuquerque, New Mexico	35	05	01	106	39	05

TABLE—Continued

Urban Area	North Longitude			West Latitude		
	°	'	"	°	'	"
Canton, Ohio	40	47	50	81	22	37
Chattanooga, Tennessee/Georgia	35	02	41	85	18	32
Wichita, Kansas	37	41	30	97	20	16
Charleston, South Carolina	32	46	35	79	55	53
San Juan, Puerto Rico	18	28	00	66	07	00
Little Rock-North Little Rock, Arkansas	34	44	42	92	16	37
Las Vegas, Nevada	36	10	20	115	08	37
Columbia, South Carolina	34	00	02	81	02	00
Fort Wayne, Indiana	41	04	21	85	08	26
Bakersfield, California	35	22	31	119	01	16
Davenport-Rock Island-Moline, IA/IL	41	31	00	90	35	00
Shreveport, Louisiana	32	30	46	93	44	58
Des Moines, Iowa	41	35	14	93	37	00
Peoria, Illinois	40	41	42	89	35	33
Newport News-Hampton, Virginia	36	59	30	76	26	00
Jackson, Mississippi	32	17	56	90	11	06
Augusta, Georgia/South Carolina	33	28	20	81	58	00
Spokane, Washington	47	39	32	117	25	33
Corpus Christi, Texas	27	47	51	97	23	45
Madison, Wisconsin	43	04	23	89	22	55
Colorado Springs, Colorado	38	50	07	104	49	16

Note: The geographic coordinates given are from the Department of Commerce publication of 1947: "Air-line Distances Between Cities in the United States" and from data supplied by the National Geodetic Survey. The coordinates are determined by using the first city mentioned as the center of the urban area.

PART 97—[AMENDED]

37. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

38. Paragraph (b) of § 97.201 is revised to read as follows:

§ 97.201 Auxiliary station.

* * * * *

(b) An auxiliary station may transmit only on the 1.25 m and shorter wavelength bands, except the 431–433 MHz and 435–438 MHz segments.

* * * * *

39. 47 CFR 97.203 is amended by revising paragraph (d) to read as follows:

§ 97.203 Beacon station.

* * * * *

(d) A beacon may be automatically controlled while it is transmitting on the 28.20–28.30 MHz, 50.06–50.08 MHz, 144.05–144.06 MHz, 222.05–222.06 MHz or 432.07–432.08 MHz segments, or on the 33 cm and shorter wavelength bands.

* * * * *

40. 47 CFR 97.205 is amended by revising paragraph (b) to read as follows:

§ 97.205 Repeater station.

* * * * *

(b) A repeater may receive and retransmit only on the 10 m and shorter wavelength frequency bands except the 28.0–29.5 MHz, 50.0–52.0 MHz, 144.0–144.5 MHz, 145.5–146.0 MHz, 431.0–433.0 MHz and 435.0–438.0 MHz segments.

* * * * *

41. 47 CFR 97.301 is amended by revising the third line entry in the Table in paragraph (a) and the first line entry in the Table in paragraph (f) to read as follows:

* * * * *

§ 97.301 Authorized frequency bands.

* * * * *

(a) For a station having a control operator holding a Technician, General, Advanced or Amateur Extra Class operator license:

Wavelength band	ITU—Region 1	ITU—Region 2	ITU—Region 3	Sharing requirements see § 97.303 (paragraph)
*	* *	*	* *	*
1.25 m		222-225		(a), (b).
*	* *	*	* *	*

(f) For a station having a control operator holding a Novice Class operator license:

Wavelength band	ITU—Region 1	ITU—Region 2	ITU—Region 3	Sharing requirements see § 97.303 (paragraph)
VHF	MHz	MHz	MHz	
1.25 m		222-225		(a), (b).
*	* *	*	* *	*

§ 97.303 [Amended]

42 47 CFR 97.303 is amended by removing and reserving paragraph (e).

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-9397 Filed 4-29-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Parts 73, 76

[MM Docket Nos. 90-570 and 83-670, FCC 91-113]

Broadcast and Cable Services; Children's Television Programming

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, through this action, implements the provisions contained in the Children's Television Act of 1990. The Commission, first, prescribes standards for commercial limits in television broadcast and cable programming directed to children 12 years of age and under. Second, the Commission implements the requirement that it review at renewal whether television broadcasters, over the license term, have served the educational and informational needs of children, interpreting the requirement to encompass programming directed to children up to the age of 16 that furthers their positive development in any way, including serving their cognitive/intellectual or social/emotional needs. Third, the Commission requires certification of compliance with the commercial limits and submission of a summary of broadcasters' programming response to children's educational and informational needs in licensees' renewal applications and establishes certain commercial and children's programming record-keeping requirements. Fourth, the Commission applies essentially the same standards that it applies in enforcing its other rules to violations of the regulations implementing the Act. Fifth, the Commission establishes an effective date for the rules of October 1, 1991. Under these rules, the first television broadcast renewal applicants required to demonstrate compliance would be those who file renewal applications on February 1, 1992, having license expiration dates of June 1, 1992.

EFFECTIVE DATE: The effective date for the rules is October 1, 1991.

FOR FURTHER INFORMATION CONTACT: Gina Harrison, Mass Media Bureau, Policy and Rules Division, (202) 632-7792.

SUPPLEMENTARY INFORMATION: The public recordkeeping burden for § 73.3526 (3060-0214) is estimated to vary from 104 hours to 130 hours per recordkeeper with an average of 106 hours 50 minutes per recordkeeper; the public reporting burden for FCC Form 303-S (3060-0110) is estimated to vary from 40 minutes to 3 hours 10 minutes per response with an average of 48 minutes per response; and the public recordkeeping burden for § 76.305 (3060-0316) is estimated to vary from 8 hours 38 minutes to 21 hours 50 minutes with an average of 13 hours 52 minutes, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of Managing Director, Paperwork Reduction Project, Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060-0214/3060-0110), Washington, DC 20503.

This is a synopsis of the Commission's Report and Order in MM Docket Nos. 90-570 and 83-670, adopted April 9, 1991, and released April 12, 1991.

The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, Downtown Copy Center, at (202) 452-1422, 1919 M Street, NW, room 246, Washington, DC 20554.

Synopsis of Report and Order

1. This proceeding was initiated in response to the Children's Television Act of 1990, Public Law 101-437, codified at 47 U.S.C. 303a, 303b, 394 (Act). The Act: (1) Required the Commission to adopt rules limiting the number of commercial minutes that commercial broadcast licensees and cable operators may air during children's programming; (2) required that the Commission consider in its review of television broadcast license renewals, the extent to which the licensee has met the commercial limits, and the extent to which it has served the educational and informational needs of children through its overall programming, including programming specifically designed to serve such needs; and (3) required the completion, within 180 days of enactment [1] of a pending proceeding that had sought to define and resolve the treatment of "program length commercials." The notice of proposed rule making (notice), at 55 FR 50335 (December 6, 1990) solicited comment regarding various issues related to implementation of the Act's provisions.

2. Several parties raised questions regarding the constitutionality of the Act. The Commission stated that it was not obliged to question the constitutionality of an Act of Congress which it was charged with enforcing and observed that Congress had already provided a vigorous defense of its constitutionality. The Commission added that it was consistent with legislative intent, however, to interpret the Act with sensitivity to the constitutional rights of the broadcasters and cable operators it affects by affording them significant discretion when implementing the Act.

3. The Act provides that television broadcast licensees and cable operators limit the duration of advertising in children's programming to "not more than 10.5 minutes per hour on weekends and not more than 12 minutes per hour on weekdays." The Commission defined children's programming as "programs originally produced and broadcast for an audience of children 12 years old and under." This definition excludes programs originally produced for a general audience that might nevertheless be significantly viewed by children. The Commission found that the legislative history reveals that Congress intended that an age definition of 12 and under be used. It noted that there was some empirical evidence supporting an upper age limit as high as 12 years. The Commission observed that if, after some experience with using an age definition of 12 and under to implement the statute, there appears to be additional evidence that a change in the maximum age would be appropriate, the Act grants the Commission the authority to consider such modification after January 1, 1993. The Commission also clarified that if a station with an all-advertising format directs commercials for children's products to adult viewers/purchasers, these commercials would not be considered as aired in connection with "programs originally produced and

[1] The Act was enacted on October 18, 1990. It required the Commission to complete MM Docket No. 83-670 (Further Notice of Proposed Rule Making at 52 FR 44616, November 20, 1987) by April 16, 1991. The Act also required the Commission to prescribe rules implementing the commercial limits by that date.

broadcast for an audience of children 12 years of age and under."

4. The Commission defined "commercial matter" as "air time sold for purposes of selling a product or service." The Commission clarified that the requirement that air time be "sold" means that the advertiser must give some valuable consideration either directly or indirectly to the broadcaster or cablecaster as an inducement for airing the material. For purposes of determining whether material is "commercial matter," the furnishing of material for airing may or may not qualify as consideration. Some barter arrangements, depending on their terms, may involve consideration furnished as an inducement to air commercial matter.

5. The Commission additionally found that the scope of section 317 of the Communications Act, which governs when the sponsor of broadcast material must be identified, is not coterminous with the scope of commercial matter. In particular, the Agency held that material is not necessarily "commercial matter" for purposes of the Act, simply because section 317 requires a sponsorship identification. Action For Children's Television (ACT) requested that the Commission include in the definition of commercial matter all matter placing undue emphasis on products or promotional material, even if not within the scope of section 317. The Commission found that, unless the circumstances show that such material placing undue emphasis on products or promotional material fits the adopted definition of commercial matter, such material will not be deemed commercial matter.

6. The Commission found that the bare sponsorship identification announcement required under section 317 and its implementing rules, where such material is not otherwise commercial in nature, will not be deemed commercial matter under our definition here. Thus, public service messages sponsored by nonprofit organizations that promote not-for-profit activities will not be considered commercial matter for purposes of applying the commercial limits. Similarly, air time sold for purposes of presenting educational and informational material, including "spot" announcements, with the only sponsorship mention a "sponsored by," is not commercial matter. Indeed, the Commission wishes to encourage the sponsorship of educational and informational material, and believes that short-segment programming of this nature may be particularly effective in reaching a child audience. However, if a station or cable operator's promo: (1) Mentions that the upcoming program is "brought to you" by a sponsor; (2) promotes a product or service related to the program or program sponsor; or (3) mentions a prize furnished by the program sponsor, the mention of the sponsor or the sponsor's product, not being required under section 317 of the Commission's Rules, will be considered commercial matter. Of course, some consideration must be furnished for the airing of the material for it to qualify as commercial matter. Even if no separate consideration is received for such mentions, if such "hybrid" promotional/commercial spots are part of a program package for which the broadcaster or cablecaster receives consideration, then consideration was received for the airing of these announcements. Promotions of upcoming programs which do not contain sponsor-related mentions such as those described, *supra* this paragraph, will not be deemed commercial matter.

7. The Commission defined "program" as an identifiable unit of program material that is not a commercial or promotional announcement. This definition will also be used in assessing a licensee's children's programming record. The Commission clarified that under this definition, a 30 or 60 second noncommercial spot can qualify as educational and informational programming, depending on content.

8. The Commission adopted a clock-hour approach to counting commercial minutes. Counting by the clock hour begins at the start of the hour and finishes at the hour's end, and not at the start of a program segment. The Commission agreed with ACT that where a half-hour "island" of children's programming airs in the midst of adult viewing, the limits should apply on a proportionate basis. The Commission did not apply the limits to programs of shorter duration, however, as such programs constitute a relatively small proportion of children's programming. The Commission clarified that no limits should apply to an adult program aired as an "island" within a block of children's programming.

9. The Commission clarified that the limits apply to commercial breaks before and after a children's program, as well as to commercials during a program. In the general case, the Commission will measure commercial time associated with a program beginning at the hour or half-hour as appropriate, and ending on the hour or half-hour, depending on the program's duration. For programs not conforming to the standard hour or half-hour time periods or otherwise not involving clear starting and ending periods, the Commission will allocate half of the break at the beginning or end of a program to the immediately proceeding program and half to the next program.

10. The commercial limits contained in the statute apply to both television broadcast stations and cable operators. The Commission exempted cable operators from liability for commercial limit violations on broadcast stations they passively carry and on access channels, but applied the commercial limits to cable operators' locally originated channels and to cable network programs.

11. The Commission adopted a requirement that broadcast licensees certify their compliance with the commercial limits on children's programs at renewal time. If they cannot so certify, they must explain all instances in which they have exceeded these limits. In light of the statutory directive that the Commission "shall review" television renewal applications for compliance with the limits, the Agency stated that it lacked the discretion to rely completely on public monitoring. There is no such directive with respect to cable, however. In light of this fact, and given the record-keeping requirements imposed with respect to commercial limits on children's programming described below, the Commission found that reliance on public monitoring of cable is appropriate. Given the certification and record-keeping requirements imposed, and the probable efficacy of public monitoring, the Commission also declined at this time to institute a regular program of random compliance audits of broadcast stations, as requested by some commenters.

12. The Commission required commercial television broadcast licensees and cable operators to maintain records sufficient to verify compliance with the Act's commercial limits. In the case of broadcast licensees, these records should be sufficient to permit substantiation of the broadcaster's certification of compliance at renewal time. In the case of cable operators, not subject under the Act to renewal review, these records must be retained for a period sufficient to cover the applicable statute of limitations, 47 U.S.C. 503(b)(6)(B). The Commission observed that cable operators may wish to arrange to have cable networks provide to them commercial records for the children's programming cable networks supply. Broadcasters and those cable operators subject to a public file requirement, see

47 CFR 73.3526, 76.305, must make these records part of their public inspection file.

13. The Act requires that, in reviewing television license renewal applications, the Commission consider whether the licensee has served the "educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs." The Agency may "in addition" consider: (1) "Any special nonbroadcast efforts * * * which enhance the educational and informational value of such programming" and (2) any "special effort" to produce or support programming broadcast by another station in the licensee's market that is "specifically designed to serve the educational and informational needs of children." In light of the legislative intent, the Commission stated that it would implement this provision by reviewing a licensee's renewal application to determine whether, over the course of its license term, it has served the educational and informational needs of children in its overall programming, including programming specifically designed to serve such needs. The Commission stated that it expects substantial compliance throughout all of the broadcaster's license term. In situations in which the Act was in effect for less than a broadcaster's full license term, the Commission will examine a licensee's compliance during the period of the licensee's term that the rules were in effect.

14. The Agency found that the different policies underlying the Act's programming renewal review provision necessitate a broader age definition of "children" than that used for commercial limits. It interpreted the programming renewal review requirement to apply to programs originally produced and broadcast primarily for an audience of children 16 years of age and under. The Commission did not, however, require licensees to target programming to all ages of children in the under-16 range.

15. The Commission defined "educational and informational" programming for children as programming that furthers the positive development of the child in any respect, including the child's cognitive/intellectual or emotional/social needs. The notice proposed to require each licensee to assess the needs of children given (1) the circumstances within the community, (2) other programming on the station, (3) programming aired on other broadcast stations within the community, and (4) other programs for children available in the broadcaster's community of license. The Commission, however, declined to make use of these criteria mandatory, although it did adopt them as permissive guidelines for exercise of licensee discretion in applying the definition. The Commission stated that these factors can serve to make the licensee's decisionmaking process more objective and may make it easier for licensees to justify programming decisions that are questioned. The Commission did not adopt proposals for structured assessment procedures. It stated that licensees will retain reasonable discretion to determine the manner in which they assess the educational and informational needs of children in their communities, provided they are able to demonstrate the methodology they have used.

16. The Commission stated that television broadcasters have no *per se* obligation to monitor other stations' children's programming or to change their plans based on what another station airs. It stated, however, that Congress intended that licensees air some educational and informational programming "specifically designed" for children 16 years of age and under in order to satisfy our renewal review. The Commission stated that the Act imposes no quantitative standards and the legislative history suggests that Congress meant that no minimum amount criterion be imposed. The Commission stated that the amount of "specifically designed" programming necessary to comply with the Act's requirement is likely to vary according to other circumstances, including but not limited to, the type of programming aired and other nonbroadcast efforts made by the station. The Commission thus declined to establish any minimum educational and informational children's programming requirement for licensees for renewal review independent of that established in the Act.

17. The Commission clarified that short segment programming, including vignettes and PSAs, may qualify as specifically designed educational and informational programming for children. Whether or not short segment programming fully satisfies the requirement to air programming "specifically designed" to meet children's needs depends on the entire context of the licensee's programming and nonbroadcast efforts directed at children.

18. The Agency further clarified that qualifying programming need not be locally produced and need not be live action, as opposed to animation. As the legislative history also indicates, general audience programming can contribute, as part of the licensee's overall programming, to serving children's needs pursuant to the Act. It does not by definition, however, satisfy the additional requirement that licensees air some programming "specifically designed" to serve the educational and informational needs of children.

19. The legislative history of the Act provides a wealth of examples of children's programming that is educational and informational. These include "Fat Albert and the Cosby Kids" (dealing with issues important to kids, with interruptions by host reinforcing purpose of show), "CBS Schoolbreak Specials" (original contemporary drama educating children about the conflicts and dilemmas they confront), "Winnie the Pooh and Friends" (show based on books designed to encourage reading), "ABC Afterschool Specials" (everyday problems of youth), "Saved by the Bell" (topical problems and conflicts faced by teens), "Life Goes On" (problems of a retarded child, emphasizing pro-social values), "The Smurfs" (prosocial behavior), "Great Intergalactic Scientific Game Show" (basic scientific concepts), and "Action News for Kids" (weekly news program for and by kids).[2] Where determinations of whether a program qualifies as "educational and informational" are in doubt, licensees will be expected to substantiate their determinations. The Commission will rely on the guidance given in the legislative history, including the specific examples cited above, in ruling on the sufficiency of such demonstrations.

20. Section 103(b) of the Act, allows the Agency, in evaluating at renewal time whether a broadcaster has served the educational and informational needs of children, to consider "in addition" to the licensee's programming (1) "any special nonbroadcast efforts * * * which enhance the educational and informational value" of programming meeting such needs and (2) any "special effort" to produce or support programming broadcast by another station in the licensee's market that is specifically designed to meet such needs.

21. For nonbroadcast efforts to contribute to satisfying the Act's programming renewal review requirement, they must enhance the "educational and informational value"

[2] See Children's Television Act of 1989, Senate Committee on Commerce, Science and Transportation, S. Rep. No. 227, 101st Cong., 1st Sess. 7–8 (1989).

to children of television programming broadcast either by the licensee or by another station in the community. Therefore, community outreach efforts unrelated to television programming do not qualify. The Commission held that support for children's radio programming does not qualify as support for another licensee's programming under section 103(b)(2). For support for radio programming to be credited, it must also enhance a related television program under section 103(b)(1).

22. If a station produces or buys children's programs broadcast on another station, so as to qualify under section 103(b)(2) of the Act, the Commission held that both stations may rely on such programming in their renewal applications. The extent of support, measured in both time and money, given to another station's programming will determine the weight afforded it. Such support does not have to consist of the underwriting of an entire program or series to receive some credit. The licensee's obligation to have aired "specifically designed" educational and informational programming will be satisfied to a degree commensurate with the extent of its nonbroadcast efforts or support for other stations' programming. Nonprogramming efforts, however, will not entirely eliminate the obligation to air some "specifically designed" educational and informational programming. Finally, the Commission ruled that the discretion given licensees in fulfilling their responsibility to serve children's needs under the Act encompasses consideration of financial and technical factors and market size in evaluating compliance.

23. The Commission found that application of the Act's programming provisions to noncommercial stations is not required by the statute, its legislative history, or the public interest. The Commission stated that the additional costs of regulation are largely unnecessary for noncommercial stations, and would outweigh any potential benefits from application of the children's programming rules to them.

24. The Commission found that, consistent with legislative intent, television broadcasters should (1) maintain children's programming records, (2) make these records part of their public inspection file, and (3) retain discretion with regard to the form in which these records are kept. The Commission imposed only the requirements necessary to provide meaningful review. These children's programming records should contain a summary of the licensee's programming response, nonbroadcast efforts and support for other stations' programming directed to the educational and informational needs of children. The summary should reflect the most significant programming related to such needs that the licensee has aired. (As used here, the term "children's programming records" refers to all the records licensees must keep to demonstrate their response to the education and informational needs of children, even though these records may also document nonprogramming responses to such needs.) Moreover, although they are not required to do so, licensees may wish also to retain records supporting their children's programming summaries that would help demonstrate the extent of their response to the educational and informational needs of children if challenged on this issue at renewal.

25. Licensees may make their children's programming records (specifically identified as such) part of their issues/programs list or keep them as a separate list and may update them on either a quarterly or annual basis. However, at a minimum, as the legislative history suggests, such records should indicate the time, date, duration and a brief description of the program or nonbroadcast effort the licensee has made. Licensees may make general statements regarding the scheduling of short-segment programming such as PSAs and regularly scheduled programs. Licensees need not provide exact times for each and every airing in these cases. Licensees also need not give the exact time of a short-segment program that airs within a longer program. Having not adopted a targeting requirement, the Commission did not impose a *per se* obligation to record the age groups of children a program serves. As a general matter, licensees need not state the origin of a program.

26. The Commission believes that a certification of compliance would not provide enough information for the Agency to perform the type of children's programming renewal review apparently intended by the Congress. In certifying compliance with the commercial limits, a licensee is responding to a question of fact—whether it has limited its commercial time in children's programs to a measurable number of minutes, as prescribed by statute. The Act, however, does not set measurable standards for programming review at renewal time. Rather, it suggests that the Commission should take a more individualized approach to each renewal application, looking at "the extent" to which the broadcaster has met children's educational and informational needs through its "overall programming," including programming specifically designed to serve such needs, and taking into account special nonbroadcast efforts and support for other stations' programming. Certification would not allow for the performance of a review of this nature.

27. The Commission accordingly will require submission at renewal time of the summary of the licensee's programming response and other efforts directed to the educational and informational needs of children that the licensee is required to maintain in its public file. The Commission did not, however, require submission of supporting records that the licensee might wish to maintain, although those records could later be submitted by the licensee if questions regarding licensee compliance arise.

28. In light of the submission that the Agency is requiring, it is not necessary at this time to institute a regular program of random audits, as some parties suggest, although audits are always a possible enforcement mechanism. The statute does not require (or specifically authorize) the Commission to pass upon a licensee's on-going efforts prior to renewal or a licensee's promise of future compliance, and so the Agency declined to require information about proposed programs. Finally, the language and purpose of the statute do not warrant extending the filing requirements to applications for transfer and assignment, and, so the Commission elected not to do so.

29. Subject to the exception for *de minimis* violations suggested in the legislative history, the Commission will apply the same enforcement standards that it uses in enforcing the Agency's other rules to violations of the Act and its implementing rules. The Commission will assess forfeitures for violations of rules implementing the Act if violations are "willful or repeated" within the meaning of 47 U.S.C. 503. (See *MCI Telecommunications Corp.*, 3 FCC Rcd 509, 515–16 n. 22, supplemented, 3 FCC Rcd 3155, 4 FCC Rcd 7299 (1988), *appeal dismissed sub nom. Telestar, Inc.* v. *FCC*, 901 F. 2d 1131 ((D.C. Cir. 1990)).) Given that the Act's programming requirement is to be measured over the course of the license term, however, forfeitures for violation of that requirement would be appropriately considered only at renewal. Similarly, consistent with the Commission's existing enforcement scheme, violations of the Act would be considered along

with a licensee's overall performance in determining whether it is entitled to a renewal.

30. In tailoring penalties to suit the magnitude of the violation, the Commission may impose reporting requirements, forfeitures, short-term renewals, or other sanctions and may take violations into account in determining the weight of a renewal expectancy in a comparative renewal proceeding. The Agency does not believe that the Act empowers it to waive compliance on a long term, blanket basis either where an "average" number of commercial minutes is within the limits, or for financial hardship or other "unique" circumstances. The Commission noted, however, that it would consider the necessity for an emergency, occasional scheduling change which might result in commercial overage in a given hour (but did result in the "average" number of minutes in a given block of children's programming exceeding the limits), as a factor in a Commission decision to allow for extenuating circumstances. The Commission clarified that it will include in the category of *de minimis* violations, an isolated and inadvertent violation of the commercial limits.

31. The Commission defined program-length children's commercial as a program associated with a product in which commercials for that product are aired. In light of the Act's imposition of commercial limits on both television broadcasters and cable operators, the Commission will apply its definition of program-length children's commercials to both television broadcast and cable programs for children. The Act requires that the Commission complete MM Docket 83–670, which raises the program-length children's commercial issue. The Act, however, affords no specific guidance on how to decide the questions relating to program-length children's commercials.

32. The Commission found that the definition of children's program-length commercial it adopted—a program associated with a product, in which commercials for that product are aired—is clear, easy to understand and apply, and narrowly tailored. The Commission stated that this definition directly addresses a fundamental regulatory concern, that children who have difficulty enough distinguishing program content from unrelated commercial matter, not be all the more confused by a show that interweaves program content and commercial matter. Removal of related commercial matter should help alleviate this confusion. This definition also would cover programs in which a product or service is advertised within the body of the program and not separated from program content as children's commercials are required to be. The Commission found that the adopted definition clarified the manner in which the traditional definition of program-length commercial (a program segment "so interwoven with, and in essence, auxiliary to the sponsor's advertising * * * that the entire program constitutes a single commercial promotion for the sponsor's product or service") would apply to children's programs. The Commission stated that given the First Amendment context of this issue, its approach was a restrained one. It added that if abuses occur, however, it would not hesitate to revisit this issue. Further, the Commission's adopted definition harmonizes with, and codifies to some degree, existing policies with respect to host-selling and adequate separation of commercial from program material in children's programs. (In general, a first-time violation of a Commission policy such as host-selling or separation of program and commercial material will result in a letter of admonishment. Violations of the Commission's rules regarding program-length children's commercials may be subject to forfeitures.)

33. In addition, a program will be considered a program-length commercial if a product associated with the program appears in commercial spots not separated from the start or close of the program by at least 60 seconds of unrelated material. The Commission did not find record evidence justifying extending this rule beyond 60 seconds, or further expanding the host-selling policy, as one commenter requested.

34. The Commission held that any children's program found to be a program-length commercial would count toward the statutory commercial limits. Although a program-length commercial of a duration under the commercial limits would not by definition violate the commercial limits, it could violate the Commission's policy against host-selling or its policy requiring separation of commercial and program material. Because programs of such brief duration are unlikely to be aired, the Commission found it unnecessary to formulate additional penalties for short-segment program-length commercials.

35. The Commission decided not to impose a requirement that sponsorship identification announcements be interspersed through "program-length" children's commercials. The Commission further found that the record substantiates its determination that interactive toys are not in use in children's programs at this time. Thus, the Commission declined further consideration of this issue at this time.

36. Finally, the Commission set an effective date for the rules and policies regarding commercial limits, educational and information programming renewal review and program-length commercials, of October 1, 1991, subject to OMB approval. The Commission will begin evaluating compliance with the rules, effective as stated above on October 1, 1991, in commercial television broadcast renewal applications filed as of February 1, 1992, corresponding with licenses expiring as of June 1, 1992. The period from October 1, 1991, through February 1, 1992, is sufficient for the Commission to begin the compliance review mandated under the Act.

37. Some commenters asked that the Agency grant a blanket temporary waiver of the commercial time limits for children's programming acquired on a barter basis prior to completion of this proceeding, contending that a more stringent, no exceptions implementation would curtail the advertising time available to the station and reduce expected revenues from barter programs. The Commission stated that the record does not reflect (1) the number of barter contracts that divide advertising availabilities between the station and program supplier as one party described, (2) whether the division of such availabilities between the supplier and the station can be or has been renegotiated as a result of the imposition of commercial limits, (3) the amount of advertising time and associated revenues that stations would lose in the absence of the requested waiver, (4) the number of years that such barter contracts have yet to run, and (5) how the proposed relief would harmonize with the objectives of the statute. Therefore, the Commission said it was unwilling at this time to carve out the temporary exception requested.

38. Finally, Form 303–S will be amended to reflect that: (1) Commercial television broadcast licensees must certify their compliance with the commercial limits on children's programs at renewal time, and if they cannot so certify, they must explain all instances in which they have exceeded these limits; and (2) commercial television licensees must submit at time of renewal a summary of their most significant programming response and other efforts directed to the educational and informational television needs of children. A public notice will be issued when the revised Form 303–S becomes available (after the rules go into effect).

The revised forms may then be ordered from the Commission's Forms Self-Service Center, located at 1919 M Street, NW., room L-17, Washington, DC 20554. The telephone number for the Center is (202) 632-FORM.

Final Regulatory Flexibility Analysis Statement

39. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that this decision will have a significant impact on a substantial number of small entities because it imposes restrictions and recordkeeping requirements on television broadcast licensees and on cable operators. The Commission, in adopting these restrictions and requirements, sought to balance fulfillment of the goals intended by the Children's Television Act, with a minimum of unnecessary burden on broadcast licensees and cable operators.

40. The Secretary shall send a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. section 601 *et seq.*, (1981)).

41. Accordingly, *It Is Ordered* That pursuant to the authority contained in Sections 4 and 303 of the Communications Act of 1934, 47 U.S.C. 154 and 303, as amended, and the Children's Television Act of 1990, 47 U.S.C. 303(a) and 303(b), parts 73 and 76 of the Commission's Rules, 47 CFR parts 73 and 76, and FCC Form 303-S, *Are Amended*, effective October 1, 1991.

42. *It is Further Ordered* That MM Docket No. 83-670 *Is Terminated* and the ACT Petitions dated January 17, 1986, February 9, 1987, August 26, 1987, and October 5, 1987, *Are Granted to the Extent Indicated Herein and Otherwise Denied.*

AMENDATORY TEXT

Parts 73 and 76 of title 47 of the Code of Federal Regulations are amended as follows:

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

2. Section 73.3526 is amended by adding new paragraphs (a)(8)(ii) and (a)(8)(iii), by redesignating existing paragraph (a)(8) as (a)(8)(i), and by revising the fourth sentence and adding a new sentence in paragraph (e) to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

(a) * * *

(8) * * *

(ii) For commercial TV broadcast stations, records sufficient to permit substantiation of the station's certification, in its license renewal application, of compliance with the commercial limits on children's programming established in 47 U.S.C. 303a and 47 CFR 73.660.

(iii) For commercial TV broadcast stations, on either an annual or quarterly basis, records demonstrating the extent to which the licensee responded to the educational and informational needs of children in its overall programming, including programming specifically designed to serve such needs. These records may also reflect any special nonbroadcast efforts by the licensee which enhance the educational and informational value of such programming to children and any special efforts by the licensee to produce or support programming broadcast by another television station in the licensee's marketplace, which is specifically designed to serve the educational and informational needs of children. These records shall include a summary of the licensee's programming response, nonbroadcast efforts and support for other stations' programming directed to the educational and informational needs of children, and shall reflect the most significant programming related to such needs which the licensee has aired. Licensees may make their children's programming records part of their issues/programs list or keep them as a separate list. Such records should indicate, at a minimum, the time, date, duration and a brief description of the program or nonbroadcast effort the licensee has made to serve the educational and informational needs of children.

* * * * *

(e) *Period of Retention.* * * * The "significant treatment of community issues" list and the records demonstrating the station's response to the educational and informational needs of children specified in paragraph (a)(8) of this section shall be retained by commercial broadcast television licensees for the term of license, 5 years. Commercial AM and FM radio licensees shall retain the "significant treatment of community issues list" specified in paragraph (a)(9) of this section for the term of license, 7 years. * * *

* * * * *

3. Section 73.660 is added to read as follows:

§ 73.660 Commercial limits in children's programs.

No commercial television broadcast station licensee shall air more than 10.5 minutes of commercial matter per hour during children's programming on weekends, or more than 12 minutes of commercial matter per hour on weekdays.

Note 1: *Commerical matter* means air time sold for purposes of selling a product or service.

Note 2: For purposes of this section, *children's programming* refers to programs originally produced and broadcast primarily for an audience of children 12 years old and younger.

4. Section 73.661 is added to read as follows:

§ 73.661 Educational and informational programming for children.

(a) Each commercial television broadcast station licensee has an obligation to serve, over the term of its license, the educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs.

(b) Any special nonbroadcast efforts which enhance the value of children's educational and informational television programming, and any special effort to produce or support educational and informational television programming by another station in the licensee's marketplace, may also contribute to meeting the licensee's obligation to serve, over the term of its license, the educational and informational needs of children.

Note: For purposes of this section, educational and informational television programming is any television programming which furthers the positive development of children 16 years of age and under in any respect, including the child's intellectual/cognitive or social/emotional needs.

5. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, and 309.

6. Section 76.225 is added to read as follows:

§ 76.225 Commercial limits in children's programs.

(a) No cable operator shall air more than 10.5 minutes of commercial matter per hour during children's programming on weekends, or more than 12 minutes of commercial matter per hour on weekdays.

(b) This rule shall not apply to programs aired on a broadcast television channel which the cable operator passively carries, or to access channels over which the cable operator may not exercise editorial control, pursuant to 47 U.S.C. 531(e) and 532(c)(2).

(c) Cable operators must maintain records sufficient to verify compliance with this rule and make such records available to the public. Such records must be retained for a period sufficient to cover the limitations period specified in 47 U.S.C. 503(b)(6)(B).

Note 1: *Commercial matter* means air time sold for purposes of selling a product or service.

Note 2: For purposes of this section, children's programming refers to programs originally produced and broadcast primarily for an audience of children 12 years old and younger.

7. Section 76.305 is amended by revising paragraphs (a) and (c) to read as follows:

§ 76.305 Records to be maintained locally by cable system operators for public inspection.

(a) *Records to be maintained.* The operator of every cable television system having 1000 or more subscribers shall maintain for public inspection a file containing a copy of all records which are required to be kept by § 76.205(d) (origination cablecasts by candidates for public office); § 76.221(f) (sponsorship identification); § 76.79 (EEO records available for public inspection); and § 76.225(c) (commercial records for children's programming).

* * * * *

(c) The records specified in paragraph (a) of this section shall be retained for the period specified in §§ 76.205(d), 76.221(f), 76.9 and 76.225(c).

List of Subjects

47 CFR Part 73

Television broadcasting.

47 CFR Part 76

Cable television.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-9736 Filed 4-29-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 910115-1091]

RIN 0648-AD52

Pacific Halibut Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to implement certain allocative regulations governing fishing for halibut in Regulatory Area 4E in the eastern Bering Sea and Bristol Bay as recommended by the North Pacific Fishery Management Council (Council). The primary purpose and intended effect of this action is to assure the Nelson Island and Nunivak Island halibut fisheries an equitable share of the Area 4E catch limit while allowing a test fishery in Bristol Bay.

EFFECTIVE DATE: May 28, 1991.

ADDRESSES: Copies of documents supporting this rule may be obtained from Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT: Jay J.C. Ginter, Fishery Management Division, Alaska Region, NMFS, 907-586-7229.

SUPPLEMENTARY INFORMATION: The fishery for Pacific halibut (*Hippoglossus stenolepis*) off the coasts of Alaska, British Columbia, Washington, Oregon, and California is governed by the Convention for the Preservation of the Halibut Fishery of the Northen Pacific Ocean and the Bering Sea (Convention) signed by the United States and Canada in 1953. The Convention is carried out by the International Pacific Halibut Commission (IPHC). In 1977, the Secretary of State, in cooperation with the Secretary of Commerce (Secretary), determined that the Convention was inconsistent with the purposes and policies of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Consequently, the United States and Canada amended the Convention in 1979 with the Protocol Amending the Convention (1979 Protocol). The Northern Pacific Halibut Act of 1982 (Halibut Act, Pub. L. 97-176) was subsequently enacted to give effect to the 1979 Protocol.

Until 1987, all regulations governing the Pacific halibut fishery were developed by the IPHC and, for United States fishermen, recommended to the Secretary of State for implementation and published in Title 50 of the U.S. Code of Federal Regulations, Part 301. However, section 5(c) of the Halibut Act provides that the appropriate Regional Fishery Management Council under the Magnuson Act may develop regulations, including limited access regulations, that govern the United States portion of Convention waters and apply to nationals or vessels of the United States. If developed, these regulations must be in addition to, and not in conflict with, regulations adopted by the IPHC.

In 1987, this provision was interpreted by NOAA to mean that regulations having domestic allocation of the Pacific halibut resource as a primary purpose could be developed by the North Pacific Fishery Management Council with respect to Alaska and by the Pacific Fishery Management Council with respect to Washington, Oregon, and California. Regulations having biological conservation as a primary purpose would continue to be developed by the IPHC. This policy does not necessarily prevent both Regional Councils from developing biological conservation regulations that are in addition to and not in conflict with IPHC regulations. Neither does the policy necessarily prevent the IPHC from developing regulations that have secondary domestic allocation effects.

To determine the need for domestic allocation of Pacific halibut, the Council solicited regulatory proposals from the general public, other agencies and staff between August 15 and September 15, 1990. The Council received 18 such proposals and they were reviewed and evaluated by the Council's Halibut Management Team (MT) and the Halibut Regulatory Amendment advisory Group (RAAG). At its meeting of September 24-29, 1990, the Council reviewed recommendations of the MT and RAAG and decided to take no action on the proposals. Instead, the Council decided to request the IPHC to establish separate regulatory areas along the same geographical boundaries of Area 4E that existed in 1990 (55 FR 21876 and 21877, May 30, 1990) and to prescribe catch limits and seasons for these areas. The IPHC staff indicated in October that the IPHC will likely decline taking the requested action. Therefore, the Council, at its meeting of December 3-7, 1990, decided to recommend a regulatory amendment for Area 4E.

An environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) was prepared that assesses the potential environmental and economic effects of reasonable regulatory alternatives to the proposed measure including the status quo (or no change) alternative as required by the National Environmental Policy Act of 1969, Executive Order 12291, and NOAA policy.

At its December 3-7, 1990, meeting, the Council considered public testimony and the recommendations of its Advisory Panel and Scientific and Statistical Committee. The Council then voted to adopt the proposed measure as its preferred alternative and recommend its implementation to the Secretary.

NOAA published a notice of the proposed rule and request for public comment in the **Federal Register** on February 27, 1991 (56 FR 8178).

Changes From the Proposed Rule in the Final Rule

The only difference between the proposed rule and this action is the designation of the section number pertaining to catch limits from § 301.9 in the proposed rule to § 301.10 in the final rule. This change is necessary because the 1991 final rule published on April 23, 1991, on behalf of the IPHC (56 FR 18535), renumbered § 301.9 Catch limits as § 301.10.

Public Comments

No public comments were received before the end of the public comment period on March 25, 1991.

Effect of the Final Rule

This regulatory change (1) divides Area 4E into north and south subareas at a line established for the 1990 fishery by an interim rule (55 FR 21877, May 30, 1990), (2) apportions 70 percent of the catch limit for Area 4E to the north subarea and 30 percent to the south subarea, and (3) reallocates 50 percent of any unharvested catch share in the north subarea on August 1 to the south subarea.

Classification

This rule is published under section 5(c) of the Halibut Act and may be implemented only with the approval of the Secretary who has determined that it is consistent with the Halibut Act and other applicable law.

The Council prepared an EA in combination with a RIR and FRFA for this regulatory amendment. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), concluded that there will be no significant impact on the environment as a result of this rule. A copy of the EA/RIR/FRFA may be obtained from the Regional Director (see ADDRESSES).

The Assistant Administrator determined that this rule is not a "major rule" requiring preparation of a regulatory impact analysis under Executive Order 12291. This determination is based on the EA/RIR/FRFA. As required by section 604 of the Regulatory Flexibility Act, as discussed above, an FRFA was prepared for this rule.

This rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act. This rule also does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of Alaska. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. The State did not respond within the statutory time period so consistency is automatically inferred.

List of Subjects in 50 CFR Part 301

Fisheries, Treaties, Reporting and recordkeeping requirements.

Dated: April 23, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 301 is amendned as follows:

PART 301—PACIFIC HALIBUT FISHERIES

1. The authority citation for part 301 continues to read as follows:

Authority: 5 U.S.T. 5; T.I.A.S. 2900; 16 U.S.C. 773–773k.

2. In § 301.10, paragraph (g) is redesignated as paragraph (h) and revised, and a new paragraph (g) is added to read as follows:

§ 301.10 Catch limits.

* * * * *

(g) Notwithstanding paragraph (a) of this section, the portion of Area 4E that is south and east of a line from 58°21'2" N. latitude, 163°00'00" W. longitude to Cape Newenham (at 58°30'00" N. latitude, 162°10'25" W. longitude) shall be closed to fishing for halibut when the Commission determines that 30 percent of the catch limit for Area 4E has been taken from this portion of Area 4E, except that 50 percent of the unharvested catch limit remaining on August 1 in the portion of Area 4E that is north and west of this line will be available for harvest in the portion of Area 4E that is south and east of this line, subject to the other provisions of this part.

(h) When under paragraphs (c), (d), (e), (f), or (g) of this seciton the Commission has announced a date on which the catch limit for a regulatory area will be taken, no person shall fish for halibut in that area after that date for the rest of the year, unless the Commission has announced the reopening of that area for halibut fishing.

[FR Doc. 91–10034 Filed 4–26–91; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 56, No. 82
Monday, April 29, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Docket No. FV-91-220]

Tomatoes Grown in Florida; Withdrawal of Proposed Rule to Revise Handling Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Withdrawal of proposed rule.

SUMMARY: This document withdraws a proposed rule which would have established container and pack requirements for fresh market shipments of Florida tomatoes sold within the regulated area, the same as those in effect for fresh market tomato shipments to destinations outside the regulated area. The proposal also would have provided an exemption from the handling regulations to handlers who are producers who well tomatoes directly to consumers at roadside stands and u-pick operations. The proposed rule is being withdrawn because of a lack of sufficient evidence to support the proposed changes.

EFFECTIVE DATE: April 29, 1991.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96454, room 2525–S, Washington, DC 20090–6456, telephone (202) 447–5331.

SUPPLEMENTARY INFORMATION: This action withdraws a proposed rule under Marketing Agreement No. 125 and Marketing Order No. 966 (7 CFR part 966), both as amended, regulating the handling of tomatoes grown in Florida. The marketing agreement and order are authorized under the Agricultural Marketing Agreement Act of 1937 as amended (7 U.S.C. 601–674).

On December 28, 1990, a proposed rule was published in the **Federal Register** (55 FR 53308) to establish container and pack requirements for fresh market shipments of Florida tomatoes sold within the regulated area. This proposal also would have provided an exemption from the handling regulations to handlers who are producers who sell tomatoes directly to consumers at roadside stands and u-pick operations. The proposal was recommended by the Florida Tomato Committee (committee), the agency responsible for local administration of the marketing order, at an October 9, 1990, meeting. Comments were requested on the proposal from interested persons through January 14, 1991.

The U.S. Department of Agriculture (Department) received a comment filed by Florida Rural Legal Services, Inc., on January 14, 1991, opposing the proposed rule and requesting that the comment period be extended in order to provide more time for interested persons to analyze the proposed rule and prepare commenters. Subsequently, the Department extended the comment period until February 19, 1991. Approximately 300 comments on the proposed rule were received. Most of the comments submitted were in opposition and were filed by small handlers who purchase the right to enter tomato fields and glean from them tomatoes that were picked over or missed by regular harvesting crews. These small handlers do not qualify as "registered handlers" under the marketing order because they lack permanent, non-portable facilities to properly grade, size and pack tomatoes. It was asserted that the proposed container and pack requirements would severely impact these handlers and hinder the harvesting of the crop.

The committee met again on February 12, 1991, and unanimously recommended the withdrawal of the proposed changes in the handling regulation to require all tomatoes handled for shipment within the regulated area to meet container and pack requirements and, exempt from the handling regulation procedures who operate roadside stands and u-pick operations.

The committee withdraw its recommendation based on the negative comments it had received and the comments received by the Department. Further, the committee also cited as reasons for its withdrawal the prospective costs and difficulty of ensuring compliance with the proposed rule had it been adopted.

On the basis of the information supplied in the comments submitted and the proponent committee's February 12 vote to withdraw its recommendations, it is found that there is insufficient evidence in the rulemaking record to support the proposed changes in the handling regulations.

Therefore, the proposed rule published in the **Federal Register** (55 FR 53308, December 28, 1990) is hereby withdrawn.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: April 23, 1991.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–10059 Filed 4–26–91; 8:45 am]
BILLING CODE 3410–02–M

7 CFR Part 1230

[No. LS-91-003]

Pork Promotion, Research, and Consumer Information

AGENCY: Agricultural Marketing Service; USDA.

ACTION: Proposed rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act of 1985 and the Order thereunder, this proposed rule would (1) increase the rate of assessment of 0.25 percent of market value of porcine animals as prescribed in the initial Order to 0.35 percent; and (2) increase the amount of assessment per pound due on imported pork and pork products to reflect the proposed 0.10 percent increase in the initial assessment rate. The proposed assessment increases would increase annual funding of the promotion, research, and consumer information program by an estimated $10 to $12 million.

DATES: Comments must be received by May 29, 1991.

ADDRESSES: Send two copies of comments to Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Division; Agricultural

Marketing Service; USDA, room 2624–S; P.O. Box 96456; Washington, DC 20090–6456. Comments will be available for public inspection during regular business hours at the above office in room 2624 South Building; 14th and Independence Avenue, SW.; Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief; Marketing Programs Branch—202/382–1115.

SUPPLEMENTARY INFORMATION: This action was reviewed under USDA procedures established to implement Executive Order No. 12291 and Departmental Regulation 1512–1 and is hereby classified as a nonmajor rule under the criteria contained therein.

This action also was reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.). The effect of the Order upon small entities was discussed in the September 5, 1986, issue of the **Federal Register** (51 FR 31898), and it was determined that the order would not have a significant economic impact upon a substantial number of small entities.

Information available to the Department indicates that nearly all of the estimated 278,000 pork producers and many of the estimated 200 importers can be classified as small entities. This proposed rule would increase the initial rate of the assessment from 0.25 percent of the market value of porcine animals to 0.35 percent, and would increase the cents per pound and per kilogram of assessments on imported pork and pork products subject to assessment. Adjusting the rate of assessment from 0.25 to 0.35 percent and increasing the assessments on imported pork and pork products would result in an estimated increase in assessments of $10 to $12 million over a 12-month period. Of that amount approxiately $750,000 would be attributed to the increase in importer assessments. However, the gross market value of all swine marketed in the United States during 1990 exceeded $11,799,000,000. The economic impact of the proposed assessments will not be a significant portion of the total market value of swine.

Accordingly, the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities.

The information collection requirements contained in the provisions of the Pork Promotion, Research, and Consumer Information Order which would be affected by this proposal have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB Control Number 0651–0151.

The Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research, and consumer information program. The program is funded by an assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and an equivalent amount of assessment on imported porcine animals, pork, and pork products. The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as corrected, at 51 FR 36383 and amended at 53 FR 1909 and 53 FR 30243) and assessment began on November 1, 1986.

The Order requires the producers pay to the Board an assessment of 0.25 percent of the market value of each porcine animal upon sale. However, for purposes of collecting and remitting assessments, porcine animals are divided into three separate categories (1) feeder pigs, (2) slaughter hogs, and (3) breeding stock. The Order specifies that purchasers of feeder pigs, slaughter hogs, and breeding stock shall collect an assessment on these animals if assessments are due. The Order further provides that for the purpose of collecting and remitting assessments, persons engaged as a commission merchant, auction market or livestock market in the business of receiving such porcine animals for sale on commission for or on behalf of a producer shall be demed to be a purchaser.

The Order requires importers of porcine animals to pay U.S. Customs Service (USCS), upon importation, the assessment of 0.25 percent of the animal's declared value and importers of pork and pork products to pay to the USCS, upon importation, the assessment of 0.25 percent of the market value of the live porcine animals from which such pork and pork products were produced.

The procedures for collection and remittance of assessments are specified in § 1230.71 of the Order.

Pursuant to § 1620 of the Act, the assessment rate of 0.25 percent of the market value of porcine animals, pork, or pork products sold or imported was established in the initial Order and has remained unchanged since November 1, 1986, when assessment collections began. Based on the assessment rate of 0.25 percent, the total annual assessments collected during 1990 were approximately $31.5 million. Assessments on imported pork and pork products accounted for about $1.7 million of the total.

The Act and § 1230.71 of the Order contain provisions for increasing the initial rate of assessment. Section 1620(b)(2) of the Act provides that the rate of the assessment in the initial Order may be increased by not more than 0.1 percent per year upon recommendation of the National Pork Producers Delegate Body whose producer and importer members are appointed annually by the Secretary. The Act further provides that the rate of assessment may not be increased by more than 0.1 percent annually nor exceed 0.5 percent of the market value unless the Delegate Body recommends a greater increase and it is approved in a referendum.

The 1991 Delegate Body, at its annual meeting on March 7–9, 1991, in Denver, Colorado, voted overwhelmingly to recommend to the Secretary that the initial rate of assessment of 0.25 percent be increased to 0.35 percent. There were 173 Delegate Body members appointed by the Secretary in 1991. At the Delegate Body meeting 163 delegates were present during voting and cast 27,767 valid share votes. States and importers are allotted one share per $1,000 of the aggregate amount of assessment collected. There were 23,780 share votes cast in favor of the 0.1 percent increase.

The following example will illustrate the effect of the 0.1 percent increase on a per head basis. Based on the 1990 annual average seven market price of $54.55 per hundred weight for barrows and gilts with an average weight of 249 pounds as reported in the USDA's publication "Livestock, Meat, and Wool Weekly Summary and Statistics" published in January 1991, the total assessment per head at the assessment rate of 0.35 percent would be 48 cents. At the initial assessment rate of 0.25 percent, the total per-head assessment would be 34 cents. Based on the Delegate Body's recommendation and in accordance with § 1230.71(d) of the Order, it is proposed that regulations be issued increasing the rate of assessments from 0.25 to 0.35.

This proposed rule also would increase the amount of assessment on all of the imported pork and pork products subject to assessment as published in the **Federal Register** as a final rule on October 22, 1990, and effective on November 21, 1990 (55 FR 42554).

The methodology for determining the per-pound amounts for imported pork and pork products was described in the supplementary information accompanying the Order and published

in the September 5, 1986, **Federal Register** at 51 FR 31901. The weight of imported pork and pork products is converted to a carcass weight equivalent by utilizing conversion factors which are published in the USDA Statistical Bulletin No. 616 "Conversion Factors and Weights and Measures." These conversion factors take into account the removal of bone, weight lost in cooking or other processing, and the nonpork components of pork products. Secondly, the carcass weight equivalent is converted to a live animal equivalent weight by dividing the carcass weight equivalent by 70 percent, which is the average dressing percentage of porcine animals in the United States. Thirdly, the equivalent value of the live porcine animals is determined by multiplying the live animal equivalent weight by an annual average seven market price for barrows and gilts as reported by the USDA, AMS, LGMN Branch. This average price is published on a yearly basis during the month of January in the LGMN Branch's publication "Livestock, Meat, and Wool Weekly Summary and Statistics." Finally, the equivalent value is multiplied by the applicable assessment rate of 0.25 percent due on imported pork and pork products. The end result is expressed in an amount per pound for each type of pork or pork product. To determine the amount per kilogram for pork and pork products subject to assessment under the Act and Order, the cent-per-pound assessments are multiplied by a metric conversion factor 2.2046 and carried to the sixth decimal.

The formula in the preamble for the Order at 51 FR 31901 contemplated that it would be necessary to recalculate the equivalent live animal value of imported pork and pork products to reflect increases in the rate of assessments or changes in the annual average price of domestic barrows and gilts to maintain equity of assessments between domestic porcine animals and imported pork and pork products.

Substituting the proposed assessment rate of 0.35 in the formula and using the 1990 average annual seven market price for domestic barrows and gilts of $54.55 per hundred weight results in an increase in assessments for all the Harmonized Tariff Systems (HTS) numbers listed in the table in § 1230.110, 55 FR 29340; July 19, 1990, as revised at 55 FR 42554; October 22, 1990, of an amount equal to eleven- to seventeen-hundredths of a cent per pound, or as expressed in cents per kilogram, twenty-four to thirty-nine hundredths of a cent per kilogram. Based on Department of Commerce, Bureau of Census, data on the volume of imported pork and pork products available for the period Janaury 1, 1990, through October 31, 1990, the proposed increases in the assessment amounts would result in an estimated $750,000 increase in importer assessments over a 12-month period.

On March 19, 1991, a proposed rule was published in the **Federal Register** (56 FR 11519) which would increase the per-pound and per-kilogram assessments on imported pork and pork products to reflect the increase in the average seven market price per hundred weight for domestic barrows and gilts from $43.77 in 1989 to $54.55 in 1990. The initial assessment rate of 0.25 percent was used in the calculations.

Should the March 19, 1991, proposed rule become a final rule, it would increase the amount of assessments on all imported pork and pork products by four- to five-hundredths of a cent per pound or nine- to eleven-hundredths cents per kilogram. Additionally, the estimated increase in importer assessments would be $350,000 over a 12-month period. As a result, the cents-per-pound and per-kilogram assessments and the total annual increase in importer assessments resulting from the assessment rate increase proposed herein from 0.25 to 0.35 percent of market value would be less than previously discussed. The proposed rule herein reflects the increase in importer assessments using the average swine market price per hundred weight for domestic barrows and gilts of $54.55 in 1990.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agriculture research, Marketing agreement, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 1230 be amended as set forth below:

PART 1230—PORK, PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

2. Subpart B—Rules and Regulations would be amended by revising § 1230.110 to read as follows:

§ 1230.110 Assessments on Imported Pork and Pork Products.

The following HTS categories of imported live porcine animals are subject to assessment at the rate specified.

Live porcine animals	Assessment
0103.10.00004	0.35 percent customs entered value.
0103.91.00006	0.35 percent customs entered value.
0103.92.00005	0.35 percent customs entered value.

The following HTS categories of imported pork and pork products are subject to assessment at the rates specified.

Pork and pork products	Assessment	
	cents/lb	cents/kg
0203.11.00002	.27	.601305
0203.12.10107	.27	.601305
0203.12.10205	.27	.601305
0203.12.90100	.27	.601305
0203.12.90208	.27	.601305
0203.19.20108	.32	.697513
0203.19.20901	.32	.697513
0203.19.40104	.27	.601305
0203.19.40907	.27	.601305
0203.21.00000	.27	.601305
0203.22.10007	.27	.601305
0203.22.90000	.27	.601305
0203.29.20008	.32	.697513
0203.29.40004	.27	.601305
0206.30.00006	.27	.601305
0206.41.00003	.27	.601305
0206.49.00005	.27	.601305
0210.11.00101	.27	.601305
0210.11.00209	.27	.601305
0210.12.00208	.27	.601305
0210.12.00404	.27	.601305
0210.19.00103	.32	.697513
0210.19.00906	.32	.697513
1601.00.20105	.37	.835814
1601.00.20908	.37	.835814
1602.41.20203	.41	.907970
1602.41.20409	.41	.907970
1602.41.90002	.27	.601305
1602.42.20202	.41	.907970
1602.42.20408	.41	.907970
1602.42.40002	.27	.601305
1602.49.20009	.37	.835814
1602.49.40005	.32	.697513

3. Section 1230.112 would be added to Subpart B-Rules and Regulations to read as follows:

§ 1230.112 Rate of Assessment.

In accordance with § 1230.71(d) the rate of assessment shall be 0.35 percent of market value.

Done at Washington, DC on: April 24, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91–10072 Filed 4–26–91; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Part 1955

Conveyance of Single Family Housing Security Property by Deed in Lieu of Foreclosure

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: Farmers Home Administration (FmHA) proposes to amend its regulations on the conveyance of Single Family Housing (SFH) security property. FmHA will consider a borrower's offer to convey security property to the Government by deed in lieu of foreclosure only after the debt is accelerated and when it is in the Government's interest. The borrower will be advised of the assistance FmHA can offer with sale of the property, and of the consequences of a conveyance by deed in lieu of foreclosure. FmHA will credit the account with the market value of the property less any prior liens, and if the debt is not satisfied, will not release the borrower of liability. When processing an offer, if the value of the property does not appear adequate to retire the debt, FmHA will require a budget and/or financial statement and, if necessary to confirm the existence of other assets, a search of public records. The intended effect of this action is to encourage voluntary liquidation of problem loans, miximizing potential equity realization and minimizing negative credit implications for the borrower, while assuring the maximum recovery to the Government and reducing the incidence of Government acquisition of secuirty property and the resulting costs of holding and disposition.

DATES: Comments must be submitted on or before June 28, 1991.

ADDRESSES: Farmers Home Administration, U.S. Department of Agriculture, room 5307, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Joyce M. Halasz, Senior Realty Specialist, Property Management Branch, Single Family Housing Servicing and Property Management Division, telephone (202) 382–1452.

SUPPLEMENTARY INFORMATION:

Classification

This proposed action has been reviewed under USDA procedures in Departmental Regulation 1512–1, which implements Executive Order 12291 and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers, individual industries, Federal, State or local Government agencies, or geographic regions. Furthermore, there will be no adverse effects on competition, employment investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or import markets. This action is not expected to substantially affect budget outlay or affect more than one agency or to be controversial. The net result is to provide better service to rural communities.

Background/Discussion

The Office of Inspector General (OIG) in Audit No. 04663–02–CH, Cash and Debt Management Activities, made recommendations to minimize FmHA's losses from SFH borrowers who liquidate their loans by conveyance of security property to the Government when the market value is less than the debt and to clarify policy on consideration and acceptance of conveyances to reduce Government acquisition of security property.

I. Consideration of an Offer to Convey SFH Security Property

There has been no objective basis for FmHA to determine when it is appropriate to consider a borrower's offer to convey SFH security property by deed in lieu of forclosure. In the past, FmHA regulations have given the borrower a limited right to make such an offer at any time the borrower no longer wants the security property or is unable to make the payments. The ease with which FmHA hass accepted deeds in lieu of foreclosure has contributed to a large inventory of unsold houses with the consequent high cost of maintaining and selling this inventory. To establish an objective criterion, FmHA will not consider an offer for a deed in lieu of foreclosure until the debt is accelerated.

II. Satisfaction of Debt and Release of Liability Upon FmHA Accepatance of a Conveyance by Deed in Lieu of Forclosure

Until recently, section 510(c) of the Housing Act of 1949 authorized FmHA, upon accepting a conveyance of the security property, to fully satisfy and release the borrower of liability for the debt based solely on a dtermination that the borrower acted in good faith, adequately maintained the property and otherwise fulfilled the loan covenants to the best of the borrower's ability. FmHA regulations implementing this provision required FmHA to accept a conveyance based on such a determination, regardless of whether or not the conveyance is in the interest of the Government. An amendment to section 510(c) of The Housing Act of 1949 removed the "good faith" provisions, enabling the Agency to base its acceptance or rejection of an offer to convey on whether or not it is in the Government's interest and, upon its acceptance, to credit a borrower's account only with the value of the security property. Under present regulations, if there is any remaining debt, the borrower is not released from liability and the debt is declared immediately due and payable.

III. Budget and/or Financial Statement Requirement

Any release of liability after a conveyance resulting in a deficiency would be based on an approved debt settlement. Therefore, when the market value of a property appears to be less than the debt, a deficiency is likely, and FmHA will need to obtain and fully consider information about the borrower's financial condition to determine appropriate debt settlement action. FmHA may also need a search of public records if it is determined necessary to discover suspected undisclosed assets.

Programs Affected

The SFH program is listed in the Catalog of Federal Domestic Assistance under No. 10.410—Low Income Housing Loans and No. 10.417—Very Low Income Housing Repair Loans and Grants. For the reasons set forth in the Final Rule related Notice(s) to 7 CFR 3015, subpart V, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined

and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not directly involve small entities nor does it add or remove any authorities which would affect small entities.

List of Subjects in 7 CFR Part 1955

Foreclosure, Government acquired property.

Therefore, as proposed, chapter XVIII of title 7, Code of Federal Regulations, is amended as follows:

PART 1955—PROPERTY MANAGEMENT

1. The authority citation for part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

2. § 1955.10 is amended by revising paragraph (d)(3) and the introductory text of paragraph (f)(1) to read as follows:

§ 1955.10 Voluntary conveyance of real property by the borrower to the Government.

* * * * *

(d) * * *

(3) A current financial statement containing information similar to that required to complete Forms FmHA 410–1, "Application for FmHA Services;" or FmHA 442–3, "Balance Sheet," and information on present income and potential earning ability. Exception for SFH loans: FmHA requires a budget and/or financial statement and, if necessary to discover suspected undisclosed assets, a search of public records, only when the value of the security property may be less than the debt.

* * * * *

(f) * * *

(1) *SFH loans.* FmHA does not solicit or encourage conveyance of SFH security property to the Government and will consider a borrower's offer to convey by deed in lieu of foreclosure only after the debt has been accelerated and when it is in the Government's interest. Upon receipt of an offer to convey, the servicing official will remind the borrower of provisions for voluntary liquidation under § 1965.125(a) of subpart C of part 1965 of this chapter, and the consequences of a conveyance by deed in lieu of foreclosure as follows: All costs related to the conveyance which FmHA pays will be added to the debt; a credit equal to the market value of the property, as determined by FmHA, less prior liens, will be applied to the debt; and if the credit does not satisfy the debt, the borrower will not be released of liability. The conveyance is processed as follows:

* * * * *

Dated: March 22, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91–9992 Filed 4–26–91; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco, and Firearms

27 CFR Part 5

[Notice No. 716; Re: T.D. ATF–306, T.D. ATF–311, Notice Nos. 403, 410, 583]

RIN 1512–AA10

Alteration of Class and Type: Vodka (91F009P)

AGENCY: Bureau of Alcohol, Tobacco, and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco, and Firearms (ATF) is reconsidering the citric acid limitation for vodka set forth in T.D. ATF–306 (55 FR 49994, dated December 4, 1990) based, in part, on a petition it has received from Heublein, Inc. Heublein's petition presents new information and data not previously considered concerning maximum detectable levels of citric acid in vodka. In response to Heublein's petition, and in recognition of the time between issuing Notice No. 583 (51 FR 6009, dated February 19, 1986) and T.D. ATF–306, the Bureau wishes to gather additional information by inviting comments from the public and industry as to whether the 150 ppm citric acid limitation set forth in T.D. ATF–306 (55 FR 49994, dated December 4, 1990) should be retained or revised. ATF is again proposing to set a maximum limitation of 150 ppm, but also is seeking comments on whether a different limitation is appropriate.

DATES: Written comments must be received on or before July 29, 1991.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco, and Firearms, P.O. Box 385, Washington, DC 20044–0385. ATTN: Notice No. ____.

FOR FURTHER INFORMATION CONTACT: David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco, and Firearms, Washington, DC 20226 (202–566–7626).

SUPPLEMENTARY INFORMATION:

Background

T.D. ATF–306, (55 FR 49994, dated December 4, 1990), amended 27 CFR 5.23(a)(3) to authorize the use of up to 2 grams per liter (2,000 parts per million (ppm)) sugar, and a trace amount (defined as 150 milligrams per liter or 150 parts per million (ppm)) of citric acid in the production of vodka. T.D. ATF–306 (55 FR 49994, dated December 4, 1990) was effective January 3, 1991, with a formula and label cancellation date of March 4, 1991, for products not made within the limitations of the Treasury decision. The purpose in issuing T.D. ATF–306 (55 FR 49994, dated December 4, 1990) was solely to clarify the standard of identity for vodka and to maintain the integrity of the product.

On Monday, March 4, 1991, T.D. ATF–311 (56 FR 8922) was published in the **Federal Register** deferring to December 4, 1991, the effective compliance date with respect to the citric acid limitation in T.D. ATF–306 (55 FR 49994, dated December 4, 1990). The compliance date was deferred in response to a petition by Heublein, Inc. The compliance date in T.D. ATF–306 (55 FR 49994, dated December 4, 1990) regarding maximum levels for the use of sugar in vodka remains unchanged.

Petition

On February 8, 1991, Heublein, Inc., petitioned ATF for reconsideration of T.D. ATF–306 (55 FR 49994, dated December 4, 1990) and for a suspension of the March 4, 1991, formula and label cancellation date stated in the T.D., in order to permit ATF to examine new and relevant scientific information not previously available concerning maximum levels for the use of citric acid in vodka. Heublein had not submitted this information or any other comments in response to Notice No. 583 (51 FR 6009, dated February 19, 1986).

Heublein Sensory Tests

In January 1991, Heublein's Senior Sensory Scientist, Research and Development, performed standardized American Society for Testing and Materials (ASTM) approved Duo-Trio sensory discrimination tests on the difference level for detectability of citric acid in vodka. The ASTM method of Duo-Trio discrimination (balanced reference with on application (per Heublein affidavit) replication (per Heublein lab summary)) was used to determine product differences. Heublein

states that a screened and trained panel of sixteen Heublein employees evaluated and compared Heublein's Popov vodka at different acidity levels in two different tests. In the first test, the vodka at 150 ppm citric acid blender was compared to Popov vodka at its current level of 528 ppm citric acid blender. The second test compared the vodka at 150 ppm citric acid blender and at 480 ppm citric acid blender. Although the reason for selecting test levels of 50 ppm and 528 ppm is apparent, Heublein's documentation did not indicate the reason for selecting a citric acid blender content of 480 ppm as a test level.

Heublein's stated goal in conducting the tests was to determine (1) whether the current formulation of Popov vodka with 528 ppm citric acid blender is perceptibly different from a reformulated Popov vodka with 150 ppm citric acid blender and (2) whether Popov vodka with a reduced level of 480 ppm citric acid blender is perceptibly different from Popov vodka with 150 ppm citric acid blender.

Heublein Test Procedure

Heublein stated in their affidavit that, pursuant to standard industry practice, the vodka was diluted with de-ionized water to 40 percent alcohol by volume while according to the Heublein lab summary it was diluted to 20 percent alcohol by volume, and served at ambient temperature. Two "Duo-Trio balanced reference discrimination" tests were conducted. "Balanced reference" means that one-half of the reference vodkas provided to the judges contained 150 ppm citric acid blender and one-half contained the other sample; either 528 ppm or 480 ppm citric acid blender, depending on which of the two tests was being conducted. According to Heublein, this method of testing provides more accurate results because it minimizes the risk of the reference vodka will affect the judges' ability to determine differences.

Each judge entered a plain and isolated booth having air flow control to prevent distracting aromas. When ready for the test to begin, the judge turned on a small light so that the vodkas, one reference vodka and two unknown vodkas, would be produced through a small door in the booth. After tasting and comparing the vodkas, the judge marked down which of the two unknown vodkas matched the reference vodka then sent the samples back through a small door. After a one minute rest, the test was repeated.

Heublein Test Results

In Test #1, which compared the Popov vodka at 528 ppm citric acid blender against the Popov vodka at 150 ppm citric acid blender, Heublein found that 21 out of 32 selections were made which correctly matched the proper unknown Popov vodka sample with the reference Popov vodka sample. Heublein claims that this result is statistically significant because it produced a "p value" equal to .055.

Heublein explained "p value" as the probability of getting the same number of correct matches of unknown vodka to reference vodka based purely on chance. Thus, a p value equal to .055 means that there is a 5.5 chance in 100 that judges randomly matching the vodkas would have produced the above results. This result may be expressed conversely as 94.5 percent "confidence level."

Heublein states that it is widely accepted in the scientific community that a p value of 0.5 or smaller is a statistically significant response which indicates an ability to choose based on perceived differences.

Heublein further states that a p value of .055 is also statistically significant when combined with other statistical analysis, such as the number of judges who correctly matched vodkas two times in a row and the variable, subjective nature of human responses to sensory data. In this case according to Heublein, a 94.5 percent confidence level indicates that the judges were able to perceive a difference between the two Popov vodka samples and did not randomly choose one over the other.

In Test #2, comparing the Popov vodka at 480 ppm citric acid blender to the Popov vodka at 150 ppm citric acid blender, Heublein found that 18 out of 32 judges correctly matched the proper unknown Popov vodka sample with the reference Popov vodka sample. The p value for these results equaled .298 meaning that approximately 30 percent of the time, judges would make the same number of correct responses based on chance alone.

A p value equal to .298 is not statistically significant. In other words, the judges were unable to perceive a difference between Popov vodka with the 480 ppm citric acid blender and Popov vodka with the 150 ppm citric acid blender. According to Heublein, Test #2 indicates that Popov vodka must contain more than 480 ppm citric acid blender before the judges would be able to correctly match the unknown Popov vodka sample with the reference Popov vodka sample in statistically significant numbers.

Discussion of Heublein Test Results

Heublein concluded that the results of these tests indicate that there is no significant difference in the sensory character (taste, smell, look) of Popov vodka containing between 150 ppm citric acid blender and 480 ppm citric acid blender. Heublein stated that the difference threshold (how much citric acid must be added to the product before a perceptible difference exists) for Popov vodka must be greater than 480 ppm. According to Heublein, the maximum level of critic acid could be set at 480 ppm rather than 150 ppm and still meet the standard of identity for vodka (i.e. "without distinctive character, aroma, taste, or color").

The panel did find a significant perceptible difference, however, between Popov vodka with 528 ppm citric acid blender and Popov vodka with 150 ppm citric acid blender. Heublein was concerned that the results of their tests indicate that a reduction in citric acid content of Popov vodka from the current level of 528 ppm to the 150 ppm level set by T.D. ATF-306 (55 FR 49994, dated December 4, 1990) will significantly change the sensory character of the product. Heublein feels that such a change in the taste and other sensory qualities of the vodka is likely to cause confusion among consumers who are accustomed to purchasing Popov vodka and other Heublein mid-priced vodkas which are widely recognized and preferred for their current taste.

ATF Sensory Tests

ATF is now in the process of evaluating the Heublein tests. In addition, ATF has secured an outside testing firm to conduct independent testing on sensory threshold levels for citric acid addition to vodka. The results of these tests will have a direct bearing on ATF's final decision concerning maximum levels for the use of citric acid in vodka without changing its designation as vodka. When the results of these tests are received, ATF will publish a notice in the Federal Register announcing the results and will make the material available for public comment. If the 90 day comment period is not sufficient to provide for public comment, ATF will extend the comment period.

ATF believes that the original maximum citric acid level of 150 ppm set by T.D. ATF-306 (55 FR 49994, dated December 4, 1990) was reasonable in light of the rulemaking record resulting in T.D. ATF-306 (55 FR 49994, dated December 4, 1990). T.D. ATF-306 (55 FR

49994, dated December 4, 1990) was based, in part, on sensory tests conducted by the ATF laboratory which found that 150 ppm is approximately the threshold at which the presence of citric acid can be detected in vodka. Even though the ATF sensory tests involved 200 ppm of citric acid, the results supported the 150 ppm limitation taking into account a margin of 50 ppm to ensure non-detectability of the citric acid.

The ATF laboratory conducted a sensory test to determine if the presence of citric acid in vodka was organoleptically detectable at a concentration of 200 ppm. Since alcohol tends to anesthetize the taste buds it was necessary to design a test which would not require the participants to taste successive samples of 80 proof vodka. Each of the panelists were given an unidentified sample and asked to taste that sample three (3) times each day and describe, in their own words, the characteristics of their sample. A total of 23 panelists were divided into two groups. One group of 13 were given initial samples of vodka containing citric acid at a 200 ppm level, while the second group of 10 were given samples of vodka only. After 5 days they were given another sample to taste and asked to determine if the final sample was the same as or different than the initial sample which they had tasted all week.

Testing in this manner did not require that the panelist be able to determine if citric acid was absent or present in the vodka, but only that the panelist be able to determine that their initial sample was the same as or different than the final sample.

Results of ATF Tests

Seven (7) of the 13 panelists, whose initial sample contained citric acid, correctly determined that their initial sample, containing citric acid, was different from their final sample which contained only vodka. Three (3) others correctly identified their initial sample containing citric acid and their final sample containing citric acid as being the same. The remaining three panelists were unable to determine that their initial sample containing citric acid was the same as the final sample which also contained citric acid.

Three (3) of the 10 panelists whose initial sample contained only vodka correctly matched there initial sample containing vodka only with their final sample which contained vodka only. One other panelist correctly identified the initial sample containing only vodka as being different than the final sample which contained citric acid. Three (3) panelists incorrectly determined that their initial sample containing vodka was different than their final sample containing only vodka. The remaining three (3) panelists incorrectly determined that their initial sample containing only vodka was the same as their final sample which contained citric acid.

A total of 14 out of 23 panelists, or 60.9 percent correctly identified the final sample as being the same or different than their initial sample.

Statistical tables indicate that 14 correct judgments in a field of 23 trials is not statistically significant. A field of 23 trials would require 16 correct judgments to establish a reliability of 95 percent. It would appear that a significant difference arises when the panelists are given citric acid first (10 of 13 correct) as opposed to those given vodka first (4 of 10 correct).

Proposed Regulatory Change

ATF is proposing to retain § 5.23(a)(3)(ii) authorizing the use of a trace amount (defined as up to 150 milligrams per liter or 150 ppm) of citric acid in the production of vodka, without changing its designation as vodka. Because citric acid is not an essential component of vodka, ATF is proposing to amend § 5.23 which regulates additions of substances to distilled spirits, rather than § 5.22(a)(1) which is the standard of identity of vodka. Under this proposal, vodka made with a greater concentration of citric acid would be designated "flavored vodka" or labeled with a fanciful name under part 5.

Public Participation

ATF requests comments from all interested persons. ATF is particularly interested in comments concerning citric acid levels higher or lower than the proposed maximum level of 150 ppm. Also, ATF is interested in comments concerning the current standard of identity for vodka in 27 CFR 5.22(a)(1) relative to vodkas containing citric acid. That is, should ATF establish a separate standard of identity for vodkas containing citric acid. This issue was previously raised in an advance notice of proposed rulemaking published in 1982. (Notice No. 403, 47 FR 1148, dated January 11, 1982).

All comments received on or before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future action. ATF will not recognize any material as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure should not be included in the comment. The name of the person submitting the comment is not exempt from disclosure.

During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right, in light of all circumstances, to determine if a public hearing is necessary.

Regulatory Flexibility Act

It is hereby certified that this document will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required because the document is not expected (1) to have significant secondary or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in E.O. 12291 and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this document because no requirement to collect information is imposed.

Disclosure

Copies of the petition, the notices, the Treasury decision, and all comments are available for public inspection during normal business hours at: ATF Reading Room, room 6300, 650 Massachusetts Avenue NW., Washington, DC. The test results submitted by Heublein are in the affidavits of Heublein employees. These affidavits are available for public inspection.

Drafting Information

The principal author of this document is David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco, and Firearms.

List of Subjects in 27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and Containers.

Issuance

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

Paragraph 1. The authority citation for 27 CFR part 5 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 5.23(a)(3)(ii) is revised to read as follows:

§ 5.23 Alteration of class and type.

(a) *Additions.* * * *

* * * * *

(3) * * * (ii) any material whatsoever in the case of neutral spirits or straight whiskey, except that vodka may be treated with sugar in an amount not to exceed 2 grams per liter, and with citric acid in an amount not to exceed 150 milligrams per liter; or * * *

* * * * *

Signed: April 16, 1991.

Daniel R. Black,

Acting Director.

Approved: April 17, 1991.

John P. Simpson,

Acting Assistant Secretary, (Enforcement).

[FR Doc. 91-10095 Filed 4-26-91; 8:45 am]

BILLING CODE 4810-31-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1804 and 1852

RIN 2700-AB14

Security Plan for Unclassified Automated Information Resources

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Notice of proposed rulemaking.

SUMMARY: NASA is considering an amendment to the NASA FAR Supplement (NFS) that provides for a solicitation provision and a contract clause to obtain contractor compliance with requirements for protecting unclassified automated information resources under the Compuer Security Act of 1987. This proposed NFS coverage will require the apparently successful offeror, under NASA solicitations involving unclassified automated information resources, to provide a plan describing its automated information security program.

DATES: Comments must be received on or before May 29, 1991.

ADDRESSES: Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Carol E. Bennett, Telephone: (202) 453-8254.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written comments. Persons submitting comments should include their names and addresses, identify this notice (NASA Case 0339) and the specific section of the proposal to which their comments apply, and give reasons for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned.

Background

Sensitive information and automated information resources are important to the functioning of the Federal government. The protection of such information is integral to the government serving the public interest. Concern that Federal agencies were not adequately protecting sensitive information contained in computers caused Congress to enact Public Law 100-235, the Computer Security Act of 1987 (the Act). The Act provides for establishing minimum acceptable security practices for Federal computer systems that contain sensitive information and declares that improving the security and privacy of sensitive information in Federal computers systems is in the public interest. It prompts Federal agencies to take measures to improve the security and privacy of these systems. This requirement for an automated information security plan is being adopted under Section 6 of the Act, Additional Responsibilities for Computer Systems Security and Privacy, consistent with the guidelines in OMB Bulletin 88-16. In addition, this requirement complies with 41 CFR 201-39.1001-1(i), Federal Information Resources Management Regulations, which is effective April 29, 1991.

Comment on Alternatives

Interested persons are invited to suggest other methods, in addition to, or in place of, a contractor security plan for complying with section 6 of the Act.

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this proposed coverage will become a part, is codified in 48 CFR, chapter 18, and is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933-003-00000-1. It is not distributed to the public, either in whole or in part, directly by NASA.

Regulatory Flexibility Act

The proposed revision is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the security plan will be required from only the apparently successful offeror and only when the solicitation involves a compuer system covered by the Act. Therefore, an initial regulatory flexibility analysis has not been performed. However, comments from small entities concerning the affecting NASA FAR Supplement sections will also be considered in accordance with the Act.

Paperwork Reduction Act

This proposed rule does not significantly alter any reporting or recordkeeping requirements currently approved by OMB under OMB Control Number 2700-0042 (expires May 31, 1993).

List of Subjects in 48 CFR Parts 1804 and 1852

Government procurement.

S.J. Evans,

Assistant Administrator for Procurement.

1. The authority citation for 48 CFR parts 1804 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1804—ADMINISTRATIVE MATTERS

2. Subpart 1804.4 is amended as set forth below:

1804.470-3 [Amended]

a. In section 1804.470-3, the existing paragraph is designated as paragraph (a), and a new paragraph (b) is added to read as follows:

1804.470–3 Responsibilities.

(a) * * *

(b) The requiring activity is also responsible for determining to what extent a contractor security plan for unclassified automated information resources will be required and evaluating and recommending approval of prospective contractors' automated information security plans.

1804.470–4 [Amended]

b. In section 1804.470–4, the existing paragraph is designated as paragraph (a), the word "The" of newly designated paragraphs (a) is removed and the word "Except as provided in paragraph (b) of this section, the" are added in its place, and a new paragraph (b) is added to read as follows:

1804.470–4 Contract clause.

(a) * * *

(b) The clause prescribed in paragraph (a) of this section may be excluded from any contract when the requiring activity, in consort with its computer security manager, recommends that a security plan for unclassified automated information resources be submitted by the apparently successful offeror after notification of selection but before contract award. Under these circumstances, the contracting officer shall insert the provision at 1852.204–77, Submission of Security Plan for Unclassified Automated Information Resources, in solicitations and the clause at 1852.204–78, Security Plan for Unclassified Automated Information Resources, in contracts. The provision may be modified to identify specific information that is to be included in the plan. The contracting officer shall incorporate the approved plan into the contract by reference as provided for in the provision and the clause. The clause may be modified to omit reference to the provision when the solicitation did not include the provision.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Part 1852 is amended as set forth below:

1852.204–76 [Amended]

a. In the introductory paragraph of section 1852.204–76, the citation "1804.470–4" is revised to read "1804.470–4(a)."

1852.204–77 [Added]

b. Section 1852.204–77 is added to read as follows:

1852.204–77 Submission of Security Plan for Unclassified Automated Information Resources.

As prescribed in 1804.470–4(b), insert the following provision:

Submission of Security Plan for Unclassified automated Information Resources (XXX 1991)

(a) The apparently successful offeror shall provide a plan, for Contracting Officer approval prior to award, that describes its automated information security program. The plan shall be submitted no later than thirty days after receipt of the Contracting Officer's written request. The plan shall address the security measures and program safeguards which will be provided to ensure that all information systems and resources acquired and utilized in the performance of the contract by contractor and subcontractor personnel:

(1) Operate effectively and accurately;

(2) Are protected from unauthorized alteration, disclosure, or misuse of information processed, stored, or transmitted;

(3) Can maintain the continuity of automated information support for NASA missions, programs, and functions;

(4) Incorporate management, general, and application controls sufficient to provide cost-effective assurance of the system's integrity and accuracy; and

(5) Have appropriate technical, personnel, administrative, environmental, and access safeguards.

(b) This plan, as approved by the Contracting Officer, will be included in any resulting contract for contractor compliance.

(End of provision)

1852.204–78 [Added]

c. Section 1852.204–78 is added to read as follows:

1852.204–78 Security Plan for Unclassified Automated Information Resources.

As prescribed in 1804.470–4(b), insert the following clause:

Security Plan For Unclassified Automated Information Resources (XXX 1991)

In addition to complying with any functional and technical security requirements set forth in the Schedule and the clauses of this contract, the Contractor shall comply with the Unclassified Automated Information Resources Security Plan submitted pursuant to provision 1852.204–77, Submission of Security Plan for Unclassified Automated Information Resources, as approved by the Contracting Officer.

(End of clause)

[FR Doc. 91–10032 Filed 4–26–91; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 190, 191, 192, and 195

[Docket No. PS–120, Notice 1]

RIN 2137–AB 96

Inspection and Burial of Offshore Gas and Hazardous Liquid Pipelines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Natural gas and hazardous liquid pipelines buried in shallow offshore waters in the Gulf of Mexico have been involved in accidents with fishing and other vessels. Public Law 101–599 was enacted to determine the extent to which pipelines in shallow waters in the Gulf of Mexico may be a hazard to fishing vessels. These proposed rules would implement the immediate provisions of Public Law 101–599 amending the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979. As proposed in this Notice, operators of natural gas and hazardous liquid pipelines would be required to do the following: (1) Conduct an underwater inspection of pipelines in the Gulf of Mexico and its inlets located in water less than 15-feet deep, within 1 year of the issuance of the final rule or May 16, 1992, whichever comes first; (2) report to the Coast Guard those pipelines which have become exposed or otherwise present a hazard to navigation and mark such pipelines with a buoy; and (3) bury those pipelines identified under (2) above, or by any other person, within 6 months after discovery. Other proposals necessary to implement Public Law 101–599 would provide for reporting of the results of the underwater inspection to the Department, as well as providing for criminal penalties for damaging, removing, defacing, or destroying a pipeline marker buoy.

DATES: Interested persons are invited to submit written comments on this proposal by May 29, 1991. Late filed comments will be considered to the extent practicable. A short comment period is necessary in order to try to meet the statutory deadline.

ADDRESSES: Send comments in duplicate to the Dockets Unit, room 8417, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Identify the docket and notice number stated in the

heading of this notice. All comments and docketed material will be available for inspection and copying in room 8419 between 8:30 a.m. and 5 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: Cesar De Leon, (202) 366–1640, regarding the subject matter of this proposed rule or the Dockets Unit, (202) 366–4148, regarding copies of this proposed rule or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1987 a fishing vessel struck and ruptured an 8–inch diameter natural gas liquid pipeline while maneuvering in shallow waters in the Gulf of Mexico off the coast of Louisiana. The released gas ignited, resulting in the deaths of two crewmen. The pipeline was originally installed in 1968 and buried onshore, parallel to the shoreline. In the intervening years, the shoreline underwent substantial erosion, and at the time of the accident, the pipeline reportedly was exposed on the seabed in open water approximately 1 mile offshore.

On October 3, 1989, a 160–foot menhaden fishing vessel, the Northumberland, struck a Natural Gas Pipeline Co. 16–inch diameter offshore gas transmission pipeline about a ½ nautical mile offshore in the gulf of Mexico near Sabine Pass, Texas. Natural gas under a pressure of 835 psig was released. An undetermined source on board the vessel ignited the gas and engulfed the vessel in flames. Eleven of fourteen crew members died as a result of the accident. An investigation of the accident determined that the pipeline had been exposed above the seabed for 1 or more years.

In February 1990, at the request of RSPA, a joint task force was formed, made up of five Federal agencies and two state agencies to develop solutions to the risks posed in the Gulf of Mexico by the co-existence of pipelines and vessel operations. The agencies represented were RSPA, the Minerals Management Service (MMS) of the Department of the Interior, the National Ocean Service of the National Oceanic and Atmospheric Administration, the U.S. Coast Guard, the U.S. Army Corps of Engineers, the Texas Railroad Commission, and the Louisiana Office of Conservation. A report on offshore pipelines prepared by the joint task force is available in the docket.

On April 9, 1990, the RSPA sent an alert notice to all operators of natural gas and hazardous liquid pipelines located in offshore waters. A copy of the alert notice is available in the docket. The purpose of this alert notice was to advise pipeline operators of recurring safety problems involving marine vessel operations and to alert them that exposed pipelines pose a threat to the safety of the crews of fishing vessels in shallow coastal waters. It also advised pipeline operators to identify and correct any conditions which would violate applicable pipeline safety requirements. RSPA also sent the Alert Notice to the Louisiana Shrimp Association, Texas Shrimp Association, Southeastern Fisheries Association, National Fish Meal & Oil Association, and Concerned Shrimpers of America to alert the commercial fishing industry to the potential hazards of unburied offshore pipelines.

In addition, on May 18, 1990, the Coast Guard issued a safety notice which was published in the Local Notice to Mariners by the Coast Guard district offices in the Gulf of Mexico. A copy of the safety notice is available in the docket. The Coast Guard safety notice advised mariners regarding the risks posed by submerged offshore pipelines that may have become exposed and thereby may endanger fishing vessels. The safety notice requested that mariners discovering an exposed pipeline report the location immediately to the Coast Guard.

The RSPA pipeline safety regulations require that all newly constructed gas and hazardous liquid offshore pipelines located in water less than 12 feet in depth must have a minimum of 36 inches of cover or 18 inches in consolidated rock (49 CFR 192.327 and 195.248). Newly constructed gas and hazardous liquid pipelines in offshore waters from 12 feet to 200 feet deep must be installed so that the top of the pipe is below the seabed unless the pipe is protected by other equivalent means (§§ 192.319 and 195.246). The MMS issues rights-of-way permits for pipelines on the Outer Continental Shelf (OCS) and requires that newly constructed pipelines be buried 36 inches (30 CFR 250.153). The Corps of Engineers issues permits for burial of offshore pipelines and normally requires that newly constructed pipelines be buried to a depth of 36 inches in water less than 200 feet deep. However, none of the three agencies currently require that pipeline operators conduct an underwater inspection or maintain the burial of those pipelines.

As a result of the alert notice issued by RSPA, many of the major gas transmission companies initiated inspection of offshore pipelines in water less than 22 feet deep. This was the depth of water originally proposed by the fishing associations in the spring of 1990 in which pipelines should be buried for safe navigation of vessels. In a survey of the member gas transmission pipeline companies conducted by the Interstate Natural Gas Association of America (INGAA), regarding offshore pipelines, 11 major gas transmission pipelines companies responded. Those companies reported that they had 126 pipelines consisting of 723 miles of pipelines in offshore waters less than 22 feet deep. By June 23, 1990, 22 of these pipelines totaling 59 miles in length had been inspected underwater to determine if those pipelines were still buried. One pipeline segment of 1320 feet was found to be exposed.

On February 26, 1990, and May 16, 1990, the Department testified on offshore pipeline safety before the Subcommittee on Coast Guard and Navigation of the House Committee on Merchant Marine and Fisheries and on September 11, 1990 before a joint hearing of the House Public Works and Transportation and the Energy and Commerce Committees. As a result of these hearings and meetings between Congressional staff members and representatives of the pipeline industry and the commercial fishing industry, Congress passed H.R. 4888, which was signed by the President on November 16, 1990. That legislation, Public Law 101–599, is available in the docket.

Public Law 101–599

Public Law 101–599 amended the Natural Gas Pipeline Safety Act of 1968 (NGPSA) (49 U.S.C. 1671 *et seq.*) and the Hazardous Liquid Pipeline Safety Act of 1979 (HLPSA) (49 U.S.C. 2001 *et seq.*), which are administered by the RSPA. The law requires that not later than 18 months after the enactment of this legislation or 1 year after issuance of regulations, whichever occurs first, the operator of each offshore gas or hazardous liquid pipeline facility in the Gulf of Mexico and its inlets shall inspect such pipeline facility and report to the Department on any portion of a pipeline facility which is exposed or is a hazard to navigation. Therefore, this initial inspection must be completed by May 16, 1992 or 1 year after issuance of regulations, whichever comes first. This requirement shall apply to pipeline facilities between the high water mark and the point where the subsurface is under 15 feet of water, as measured from mean low water. In accordance with Public Law 101–599, hazardous liquid gathering lines of 4 inch nominal diameter and smaller are excepted from this inspection. The Department may extend the time period for compliance with this inspection requirement for an additional period of up to 6 months for

gas transmission pipeline facilities, or up to 1 year for hazardous liquid pipeline facilities. The law provides that any inspection of a pipeline facility which has occurred after October 3, 1989 (the date of the Northumberland accident) may satisfy the inspection requirements if it complies with the pertinent requirements proposed in this Notice.

Public Law 101–599 requires the Department to establish standards by May 16, 1991, on what constitutes an "exposed pipeline facility," and what constitutes a "hazard to navigation." The law requires that pipeline operators report to the Department, through the appropriate Coast Guard offices, potential or existing navigational hazards involving pipeline facilities. As result of the inspection, an operator of a pipeline facility who discovers any pipeline facility which is a hazard to navigation in water 15 feet deep or less as measured from mean low water, shall mark the location with a Coast Guard approved buoy or marker and notify the Department. The law provides that the marine buoy or marker is considered a pipeline sign or right-of-way marker for purposes of section 11(c)(3) of the NGPSA or section 208(c)(3) of the HLPSA. These sections provide for criminal penalties for persons who willfully and knowingly damage, deface, remove, or destroy any pipeline sign or marker. Public Law 101–599 also requires the Secretary of Transportation to issue regulations requiring each gas and hazardous liquid pipeline facility that has been inspected and found to be exposed or that constitutes a hazard to navigation, be buried within 6 months after the condition is reported to the Department.

Furthermore, Public Law 101–599 requires that not later than May 16, 1993; the Secretary shall, on the basis of experience with the initial inspection program, establish a mandatory, systematic, and, where appropriate, periodic inspection program of offshore pipeline facilities in the Gulf of Mexico and its inlets. This will be addressed in a future rulemaking.

In addition, Public Law 101–599 amends the Ports and Waterways Safety Act (33 U.S.C. 1221 at seq.), which is administered by the Coast Guard, to encourage fishermen and other vessel operators to report potential or existing navigational hazards involving pipeline facilities to the Department through the appropriate Coast Guard field office. Upon notification by the pipeline operator or by any other person of a hazard to navigation, the Department will notify the Coast Guard, the Office of Pipeline Safety, other affected Federal and state agencies, and vessel owners and operators in the vicinity of the pipeline facility.

Advisory Committees

The Technical Pipeline Safety Standards Committee met in Washington, DC, on February 20, 1991 and the Technical Hazardous Liquid Pipeline Safety Standards Committee met in Washington, DC, on February 21, 1991. These advisory committees were established by statute to consider the feasibility, reasonableness, and practicability of proposed pipeline safety regulations.

The advisory committees informally discussed a draft notice of proposed rulemaking, which proposed revisions to the regulations in parts 192 and 195 regarding offshore pipelines. The draft notice considered by the advisory committees addressed the requirements in Public Law 101–599 as well as additional requirements that were not included in the law but which had been developed by the multi-agency task force formed after the Northumberland accident, including: applicability to all offshore areas, inclusion of abandoned pipelines in the monitoring requirements, requiring 36 inch burial of pipelines in water depths up to 200 feet deep, and a discussion of possibly proposing underwater inspection requirements of offshore pipelines after a major storm.

Staff representatives of the Subcommittee on Coast Guard and Navigation of the House Committee on Merchant Marine and Fisheries that participated in the drafting of Public Law 101–599 appeared before each pipeline advisory committee to urge that the Department issue more narrow regulations limited to the requirements of that law. As a result of the unanimous opinion of the advisory committees and the valuable assistance of subcommittee staff representatives, this proposed rule addresses only the immediate requirements of Public Law 101–599. The longer-term mandates of Public Law 101–599, as well as other offshore and underwater pipeline proposals that may merit consideration, will be addressed in a future proposed rulemaking.

Discussion of Proposed Revisions

The RSPA is proposing similar requirements for both gas transmission and hazardous liquid pipeline facilities, and these regulations would be applicable to interstate and intrastate offshore pipelines. In accordance with §§ 192.1 and 195.1, these proposed rules would be applicable to offshore pipeline facilities on the OCS as that term is defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331). Further, in accordance with §§ 192.9 and 195.1, these proposed rules would also be applicable to all gas and hazardous liquid gathering lines subject to part 192 or part 195 in the Gulf of Mexico and its inlets; except, as provided in the law, those hazardous liquid gathering lines of 4 inch nominal diameter and smaller. Gathering lines, if they are exposed in shallow water, can be equally as unsafe as transmission pipelines. It should be noted that under the current regulations, gathering lines located in the inlets of the Gulf of Mexico may be defined as onshore gathering lines and consequently not be currently subject to the regulations in part 192 or part 195. This proposed regulation would make those gatherings lines in the inlets of the Gulf of Mexico subject to the proposed inspection, marking, and re-burial requirements in §§ 192.612 and 195.413.

In accordance with §§ 192.1(b)(1) and 195.1(b)(5), these proposed rules would not apply to the offshore gathering of gas or hazardous liquids upstream from the outlet flange of each facility on the OCS where hydrocarbons are produced or where hydrocarbons are first separated, dehydrated, or otherwise processed, whichever facility is farther downstream. It should also be noted that gathering lines do not include production flow lines. The extent of production flow lines will be better defined in an upcoming NPRM proposing to revise the definition of a gathering line.

Proposals

This proposed rulemaking incorporates all of the immediate requirements of this legislation administered by RSPA. The proposed rule would apply to pipelines which, in accordance with the definition of "pipeline" in §§ 192.3 and 195.2, means all parts of those physical facilities through which gas or hazardous liquids move in transportation, including pipe, valves, and other appurtenances attached to a pipe. For the purpose of this rulemaking, we are not using the term "pipeline" facilities" as set forth in Pub. L. 101–599. "Pipeline facilities" is defined by RSPA regulations (§§ 192.3 and 195.2) to include such facilities as offshore platforms that are not intended to be buried. These structures were not intended to be addressed by the statute.

Section 190.229(d), which is applicable to both gas and hazardous liquid pipelines, would be revised in accordance with Public Law 101–599 to include a provision that if a person willfully and knowingly defaces,

damages, removes, or destroys a pipeline marine buoy, such a person shall, upon conviction, be subject to a fine of not more than 5,000, imprisonment for a term not to exceed 1 year, or both. The use of pipeline marine buoys is regulated in 33 CFR part 64 which is referenced in the proposed §§ 192.612 and 195.415.

A new § 191.27, which is applicable to both gas and hazardous liquid pipelines, would be added to require the filing of offshore pipeline condition reports required by the underwater inspection of pipelines proposed in §§ 192.612 and 195.413. These reports would have to be submitted to RSPA within 60 days after the completion of the inspection of all pipelines subject to the underwater inspection. This information will be used to later develop regulations for the mandatory, systematic, and, where appropriate, periodic inspection of offshore pipelines in the Gulf of Mexico and its inlets. The law requires that such regulations be established within 30 months after enactment of the legislation, or May 16, 1993.

Sections 192.1(b)(2) and 195.1(b)(4) are proposed to be revised to clarify that gathering lines that are located in the inlets of the Gulf of Mexico, which currently may be defined as onshore gathering lines, will be subject to the proposed inspection, marking, and re-burial requirements in §§ 192.612 and 195.413. However, such gathering lines in the inlets of the Gulf of Mexico would not be subject to other regulations in parts 192 or 195.

Definitions of "exposed pipeline," "Gulf of Mexico and its inlets," and "hazard to navigation" are proposed to be added to §§ 192.3 and 195.2.

With regard to the definition of "exposed pipeline," a pipeline is considered to be exposed on the seabed when the top of the pipeline protrudes above the seabed, or protrudes above the silty bottom if the bottom of the ocean is not firm. RSPA recognizes that many offshore areas in the Gulf of Mexico do not have an easily definable seabed but believes that establishing a qualitative measurement of the ocean bottom, such as silt density, would be difficult because of shifting and varying silt density on the ocean bottom.

With regard to the definition of "Gulf of Mexico and its inlets," it would include the waters from the mean high water mark of the Gulf including its inlets, seaward to a depth of 15 feet, as measured from the mean low water. The term "mean low water" is used in this regulation to comport with that term as used in Public Law 101–599. "Mean low water" can be considered to denote "mean lower low water" as used in the nautical chart datum of the National Ocean Service. The inlets that are open to the Gulf and subject to the navigation of vessels, such as Barataria or Timbalier Bay, are included in the definition to assure that pipelines in these inlets do not pose a hazard to vessels.

With regard to the definition of "hazard to navigation," it is proposed to mean that the top of a pipeline is buried less than 12 inches below the seabed in water less than 15 feet deep, as measured from the mean low water. Because fishing vessels navigate frequently in offshore waters that are less than 15 feet deep, it is important that a pipeline be sufficiently buried in these locations. These fishing vessels frequently navigate in a manner that their hulls touch the seabed. As a result, it is important that the pipelines be buried to protect the fishing vessels and the pipelines. We have consulted with the Coast Guard concerning these proposed definitions. RSPA urges the operators currently conducting underwater inspections to note the depth of burial of their pipelines pending the issuance of a final rule that establishes a final definition of an "exposed pipeline" and a pipeline that is a "hazard to navigation." Although the law uses the terms as mutually exclusive, in fact, for the purposes of this statute and its implementing regulations, "hazard to navigation" subsumes "exposed pipeline" and the proposed definitions reflect this.

New §§ 192.612 and 195.415 would be added to require that each operator conduct an underwater inspection of its offshore pipelines in the Gulf of Mexico and its inlets, which are located in water less than 15 feet deep, as measured from the mean low water, within 1 year after the issuance of a final rule or May 16, 1992, whichever occurs first. As proposed, the inspection may be conducted by any means that will detect the location of the pipeline and the depth to which it is buried.

In lieu of the initial inspection proposed in this Notice pursuant to Public Law 101–599, the regulation would give credit to an initial inspection by an operator if it was conducted after October 3, 1989 (the date on which the Northumberland accident occurred) and completed in accordance with the final inspection requirements in this rulemaking. Many pipeline operators have already conducted underwater inspections of their pipelines advised in the ALERT Notice issued by RSPA on April 9, 1990.

Under proposed §§ 192.612 and 195.413, if a required inspection reveals, or a third party reports, that a pipeline located in water less than 15 feet deep, as measured from the mean low water, is exposed on the seabed or otherwise constitutes a hazard to navigation, the operator of that pipeline would be required to do the following: (1) Promptly notify the U.S. Coast Guard, but not later than 24 hours after discovery; (2) promptly mark the pipeline with a buoy in accordance with the Coast Guard regulations in 33 CFR part 64, "Marking of Structures, Sunken Vessels, and Other Obstructions," but no later than 7 days after discovery; and (3) within 6 months after discovery, bury the pipeline below the seabed to a depth of 36 inches for normal excavation or 18 inches for rock excavation. We have consulted with the Coast Guard concerning these reporting and marking proposals.

Impact Assessment

The proposed rules are considered to be non-major under Executive Order 11591, and are not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

This proposed rulemaking is required by law. The costs of conducting the underwater inspections are averaging $8,000 per mile using recently developed technology. Some of the variables that impact the costs of conducting an underwater inspection are the amount of pipeline to be inspected, weather, mobilization costs, and location. There are about 1,000 miles of offshore gas and hazardous liquid pipelines in the Gulf of Mexico and its inlets in water less than 15 feet deep, so that it will cost about $8 million to conduct the initial inspection of these pipelines as mandated by Public Law 101–599. Costs are expected to drop as better technology is developed and underwater inspections become more common. Assuming the information provided by INGAA regarding the underwater inspections that have been conducted as of June 23, 1990 is representative of the findings in future underwater pipeline inspection, it appears that less than 1 percent of the offshore pipelines may be exposed above the seabed. However, information is not yet available to determine the percentage of the pipelines that may be a hazard to navigation (i.e., those pipelines buried less than 12 inches). Current pipeline technology can be used in re-burying pipelines. The cost of re-burying a pipeline also varies significantly depending on similar variable factors set forth above.

A Draft Regulatory Evaluation has been prepared and it is available in the docket. This evaluation estimates the

present value of the benefits to be $17.6 million and the present value of the costs to be $8.7 million. The agency requests comments on these estimates. Based on the facts available concerning the impact of this proposal, I certify under section 605 of the Regulatory Flexibility Act that it would not, if adopted as final, have a significant impact on a substantial number of small entities, because small entities do not operate pipelines offshore.

Paperwork Reduction Act

The final rule requires that pipeline operators report to RSPA pipelines in the Gulf of Mexico and its inlets that are exposed or a hazard to navigation. In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), these information collection requirements will be submitted to the Office of Management and Budget for approval. Persons desiring to comment on these information collection requirements should submit their comments to: Desk Officer, Research & Special Programs Administration, Office of Regulatory Policy, Office of Management and Budget, 728 Jackson Place, NW., Washington, DC 20503.

Persons submitting comments to OMB are requested to submit a copy of their comments to RSPA as indicated above under "ADDRESSEE."

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. RSPA has determined that it does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects

49 CFR Part 190

Buoy, Penalties, Pipeline.

49 CFR Part 191

Pipeline, Report, Underwater inspection.

49 CFR Parts 192 and 195

Exposed, Gulf of Mexico, Hazard to navigation, Pipeline, Underwater inspection.

In consideration of the foregoing, RSPA proposes to amend 49 CFR parts 190, 191, 192, and 195 as follows:

PART 190—[AMENDED]

1. The authority citation for part 190 continues to read as follows:

Authority: 49 App. U.S.C. 1672, 1677, 1679a, 1679b, 1680, 1681, 1804, 2002, 2008, 2007, 2008, 2009, and 2010; 49 CFR 1.53.

2. Section 190.229 would be amended by revising paragraph (d) to read as follows:

§ 190.229 Criminal penalties generally.

* * * * *

(d) Any person who willfully and knowingly defaces, damages, removes, or destroys any pipeline sign, right-of-way marker, or marine buoy required by the NGPSA, the HLPSA, or the HMTA, or any regulation or order issued thereunder shall, upon conviction, be subject, for each offense, to a fine of not more than $5,000, imprisonment for a term not to exceed 1 year, or both.

* * * * *

PART 191—[AMENDED]

1. The authority citation for part 191 continues to read as follows:

Authority: 49 App. U.S.C. 1681(b) and 1808(b); §§ 191.23 and 191.25 also issued under 49 App. U.S.C. 1672(a); and 49 CFR 1.53.

2. Section 191.27 would be added to read as follows:

§ 191.27 Filing offshore pipeline condition reports.

(a) Each operator shall, within 60 days after completion of the underwater inspection of all pipelines subject to §§ 192.612(a) or 195.415(a), report the following information:

(1) Name and principal address of operator.

(2) Date of report.

(3) Name, job title, and business telephone number of person submitting the report.

(4) Total number of miles of pipeline inspected.

(5) Length and date of installation of each exposed pipeline segment, and location according to the Minerals Management Service or state offshore area and block number tract.

(6) Length and date of installation of each pipeline segment, if different from a pipeline segment identified under paragraph (a)(5) of this section, that is a hazard to navigation, and the location according to the Minerals Management Service or state offshore area and block number tract.

(b) The report shall be mailed to the Information Officer, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

PART 192—[AMENDED]

1. The authority citation for part 192 continues to read as follows:

Authority: 49 App. U.S.C. 1672 and 1804; 49 CFR 1.53.

2. Section 192.1 would be amended to add paragraph (b)(2)(iii) to read as follows:

§ 192.1 Scope of part.

* * * * *

(b) * * *

(2) * * *

(iii) Inlets of the Gulf of Mexico except as provided in § 192.612.

3. In section 192.3, definitions of *Exposed pipeline*, *Gulf of Mexico and its inlets*, and *Hazard to navigation* would be added in appropriate alphabetical order as follows:

§ 192.3 Definitions.

* * * * *

Exposed pipeline means a pipeline that is protruding above the seabed in water less than 15 feet deep, as measured from the mean low water.

* * * * *

Gulf of Mexico and its inlets means the waters from the mean high water mark of the coast of the Gulf of Mexico and its inlets seaward to include the territorial sea and Outer Continental Shelf to a depth of 15 feet, as measured from the mean low water.

Hazard to navigation means, for the purpose of this part, a pipeline that is buried less than 12 inches below the seabed in water less than 15 feet deep, as measured from the mean low water.

* * * * *

4. Section 192.612 would be added to subpart L to read as follows:

§ 192.612 Inspection and re-burial of pipelines in the Gulf of Mexico and its inlets.

(a) Each operator shall conduct an underwater inspection of its pipelines in the Gulf of Mexico and its inlets. The inspection must be conducted after October 3, 1989 and before (*12 months after issuance of the final rule*).

(b) If, as a result of an inspection under paragraph (a) of this section, or upon notification by any person, an operator discovers that a pipeline it operates is exposed on the seabed or constitutes a hazard to navigation, the operator shall—

(1) promptly, but not later than 24 hours after discovery, notify the U.S. Coast Guard;

(2) promptly, but not later than 7 days after discovery, mark the location of the pipeline in accordance with 33 CFR part 64; and

(3) within 6 months after discovery, bury the pipeline below the seabed to a depth of 36 inches for normal excavation or 18 inches for rock excavation.

PART 195—[AMENDED]

1. The authority citation for part 195 continues to read as follows:

Authority: 49 App. U.S.C. 2001 et seq.; 49 CFR 1.53.

2. Section 195.1 would be amended by revising paragraph (b)(4) to read as follows:

§ 195.1 Applicability.

* * * * *

(b) * * *

(4) Transportation of petroleum in onshore gathering lines in rural areas except gathering lines in the inlets of the Gulf of Mexcio would be subject to § 195.413.

* * * * *

3. In section 195.2, definitions of *Exposed pipelined, Gulf of Mexcio and its inlets,* and *Hazard to navigation* would be added in appropriate alphabetical order as follows:

§ 195.2 Definitions.

* * * * *

Exposed pipeline means a pipeline that is protruding above the seabed in water less than 15 feet deep, as measured from the mean low water.

* * * * *

Gulf of Mexico and its inlets means the waters from the mean high water mark of the coast of the Gulf of Mexico and its inlets seaward to include the territorial sea and Outer Continental Shelf to a depth of 15 feet, as measured from the mean low water.

* * * * *

Hazard to navigation means, for the purpose of this part, a pipeline that is buried less than 12 inches below the seabed in water less than 15 feet deep, as measured from the mean low water.

* * * * *

4. Section 195.413 would be added to subpart F to read as follows:

§ 195.413 Inspection and re-burial of pipelines in the Gulf of Mexico and its inlets.

(a) Except for gathering lines of 4 inch nominal diameter or smaller, each operator shall conduct an underwater inspection of its pipelines in the Gulf of Mexico and its inlets. The inspection must be conducted after October 3, 1989 and before (12 months after issuance of final rule).

(b) If, as a result of an inspection under paragraph (a) of this section, or upon notification by any person, an operator discovers that a pipeline it operates is exposed on the seabed or constitutes a hazard to navigation, the operator shall—

(1) promptly, but not later than 24 hours after discovery, notify the U.S. Coast Guard;

(2) promptly, but not later than 7 days after discovery, mark the location of the pipeline in accordance with 33 CFR part 64; and

(3) within 6 months after discovery, bury the pipeline below the seabed to a depth of 36 inches for normal excavation or 18 inches for rock excavation.

Issued in Washington, DC, on April 22, 1991.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety.

[FR Doc. 91-9850 Filed 4-26-91; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Finding on a Petition to List Five Comal Springs Invertebrates

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to amend the List of Endangered and Threatened Wildlife and Plants. The petition has been found to present substantial information indicating that listing two of the Comal Springs invertebrates (*Heterelmis comalensis* and a new genus and species of beetle in the family Dryopidae) as threatened or endangered may be warranted. A status review is initiated on these two species. Substantial information was not provided on the taxonomic status and validity of *Hexagenia* sp. and *Microcylloepus* sp. to make a positive finding on these two taxa. The current petition represented a second petition for *Stygonectes* (=*Stygobromus*) *pecki*. Since 1984 the Service has annually made a "warranted but precluded" finding for *Stygonectes* (=*Stygobromus*) *pecki*. A "warranted but precluded" finding is determined when the petition action is warranted, but the immediate proposal and timely promulgation of a regulation to implement the petitioned action is precluded because of other pending proposals to list, delist, or reclassify species.

DATES: The finding announced in this notice was made on December 14, 1990. Comments and information should be submitted by May 29, 1991.

ADDRESSES: Information, comments, or questions should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, Stadium Centre Building, 711 Stadium Drive East, Suite 252, Arlington, Texas 76011. The petition, findings, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Alisa Shull, Endangered Species Biologist, at the above address (817-885-7830 or FTS 334-7830).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the finding is positive, the Service is also required to promptly commence a status review of the species.

Mr. David Whatley, Director of Parks and Recreation for the City of New Braunfels, Texas, submitted a petition to the Service to list five Comal Springs invertebrates as endangered or threatened species. The petition was dated June 20, 1990, and received by the Service on June 21, 1990.

The five invertebrates are endemic to the Comal Springs in New Braunfels, Texas. *Heterelmis comalensis* is an aquatic insect in the family Elmidae. It belongs to a group known as "riffle beetles." A new genus and species of bettle belonging to the family Dryopidae is presently being described by Dr. Cherryl Barr of California State University and Dr. Paul Spangler of the National Museum of Natural History (Whatley, *in litt.*). This beetle is the first and only known underground-water-inhabiting, eyeless member of the family (Spangler, *in litt.*). *Hexagenia* sp. is an aquatic insect belonging to a group known as "burrowing mayflies" (Insecta: Ephemeroptera). *Microcylloepus* sp. is an aquatic insect in the "riffle beetle" group. *Stygonectes* (=*Stygobromus*) *pecki* is a crustacean (family Gammaridae) whose common name is Peck's cave amphipod. These five species are known only from Comal Springs in New Braunfels, Texas. The

springs occur in Edwards limestone at the eastern edge of the Balcones Escarpment, and flow into the Comal River, which then flows into the Guadalupe River.

The Comal Springs are dependent upon the Edwards Aquifer for their flow. The demand on the Edwards Aquifer continues to increase. In 1989 and 1990, several of the Comal Springs ceased flowing. Although *Heterelmis comalensis* and the unnamed dryopid beetle may retreat further underground in drying situations, how far they can retreat and how long they can remain their is unknown. Experts on these species consider the prospect of Comal Springs drying up to be a serious threat to these species.

After a review of the petition, and information otherwise available to the Service, the Service has found that the petition presented substantial information that listing *Heterelmis comalensis* and a new genus and species of beetle in the family Dryopidae as threatened or endangered species may be warranted. This finding initiates a status review for these two invertebrates as required under section 4(b)(3)(A) of the Act. Within one year from the date the petition was received, the Service is required under Section 4(b)(3)(B) of the Act to make a finding as to whether the petitioned action is warranted.

The Service would appreciate any additional data, information, or comments from the public, government agencies, the scientific community, industry, or any other interested party concerning the status of *Heterelmis comalensis* and the dryopid beetle.

Based on insufficient support for the taxonomic validity of *Hexagenia* sp. and *Microcylloepus* sp., the Service finds that the petitioner has not presented substantial information that the petitioned action may be warranted.

The Service originally received a petition to list *Stygobromus pecki* in 1974. In 1984, the Service made a "warranted, but precluded" finding for *Stygonectes* (=*Stygobromus*) *pecki* (49 Fr 2485). This finding has remained as "warranted, but precluded" in each annual finding since 1984. The "warranted but precluded" finding means that the petitioned action is warranted, but precluded by other listing actions. The current petition represented a second petition for this species.

Author

This notice was prepared by Sonja Jahrsdoerfer, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. (505–766–3972 or FTS 474–3972.)

Authority: The authoirty for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: April 5, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91–10024 Filed 4–26–91; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 56, No. 82
Monday, April 29, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TB-91-003]

Flue-Cured Tobacco Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. app.) announcement is made of the following committee meeting:

Name: Flue-Cured Tobacco Advisory Committee.

Date: May 21, 1991.

Time: 1 p.m.

Place: Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Flue-Cured Tobacco Cooperative Stabilization Corporation Building, 1306 Annapolis Drive, Raleigh, North Carolina 27605.

Purpose: To discuss market selling schedules, submarketing areas, new policies and procedures, and other matters for the 1991 flue-cured tobacco marketing season.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact the Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456 (202) 447-2567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting.

Dated: April 23, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91-10060 Filed 4-26-91; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

[Docket No. 91-052]

Receipt of Permit Applications for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that three applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Analyst, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permits, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organism	Field test location
91-078-01	DNA Plant Technology Corporation	03-19-91	Tomato plants genetically engineered to express the chitinase (*chiA*) gene to control fungal plant pathogens.	California.
91-079-01	DNA Plant Technology Corporation	03-20-91	Tomato plants genetically engineered to express a thermal hysteresis protein gene.	California.
91-080-01	University of Wisconsin at Madison	03-21-91	Alfalfa plants genetically engineered to express the B-glucuronidase (GUS) gene and a kanamycin resistance gene.	Wisconsin.

Done in Washington, DC, this 23rd day of April 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-10056 Filed 4-26-91; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 91-049]

Public Meeting; Availability of Environmental Assessment and Preliminary Finding of No Significant Impact for Field Testing a Live Genetically Engineered Vaccinia Vectored Rabies Vaccine in Pennsylvania

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we are holding a public meeting to discuss an environmental assessment and preliminary finding of no significant impact that has been prepared by the Animal and Plant Health Inspection Service concerning a live genetically engineered vaccinia vectored rabies vaccine that expresses the rabies virus surface glycoprotein. The environmental assessment and preliminary finding indicates that the field testing of the rabies vaccine will not have a significant impact on the human environment. Based on this preliminary finding of no significant impact, the Animal and Plant Health Service has determined that an environmental impact statement need not be prepared for a field test of the rabies vaccine in Pennsylvania.

DATES: The public meeting will be held from 10 a.m. to 12:30 p.m. and 1:30 to 4 p.m. local time of Friday, May 17, 1991. Written comments received on or before June 1, 1991, regarding the environmental assessment will be considered.

ADDRESSES: The public meeting will be held in the Auditorium, Pennsylvania Game Commission, State Headquarters Building, 2001 Elmerton Avenue, Harrisburg PA 17110-9797.

A copy of the environmental assessment and preliminary finding of no significant impact and any written comments are available for public inspection in room 1141, United States Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250 between 8 a.m. and 4:30 p.m., Monday through Friday except holidays. A copy of the environmental assessment may also be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT.** Send an original and three copies of written comments to Chief, Regulatory Analysis and Development Staff, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91-049.

FOR FURTHER INFORMATION CONTACT: Dr. Robert B. Miller, Senior Staff Veterinarian, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 832, Federal Building, 6505 Belcrest Road, Hyattsville MD 20782; Telephone No. (301) 436-5863.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) has prepared an environmental assessment and preliminary finding of no significant impact relative to a request for authorization to conduct a limited field trial in Sullivan County, Pennsylvania, with an experimental live vaccinia vectored rabies vaccine that expresses the rabies virus surface glycoprotein. The sponsor of the limited field trial is the Wistar Institute of Anatomy and Biology, Philadelphia, Pennsylvania. A limited field trial of the same vaccine was previously approved by APHIS and initiated on Parramore Island, Virginia, on August 20, 1990. The bait distribution stage of that field trial has been completed. Monthly reports of the Parramore Island limited field trial have been reviewed by APHIS and the relevant data incorporated into APHIS' environmental assessment for the limited field trial in Pennsylvania.

Prior to the preparation of an environmental assessment and preliminary finding of no significant impact (hereinafter "the document") the document was reviewed by an ad hoc expert panel and the Vaccinia Subcommittee of the National Vaccine Program of the Public Health Service of the Department of Health and Human Services. The ad hoc expert panel reviewed the document in the context of their respective scientific expertise in the areas of pox virology, rabies virology, wildlife biology, raccoon biology, human medicine, ethics and public policy. The Vaccinia Subcommittee of the National Vaccine Program, consisting of scientists and physicians from the Centers for Disease Control, the National Institutes of Health, and the Food and Drug Administration, reviewed the document with primary emphasis on the public health aspects of the field trial in Pennsylvania.

APHIS is convening a public meeting with the ad hoc expert panel that reviewed the document. The purpose of the meeting is to provide a forum in which the public may participate, in an open discussion of the issues raised in the document.

Previous Public Meetings

APHIS participated in a joint State-Federal public meeting in LaPorte, Pennsylvania, on October 24, 1990, and a public hearing in Harrisburg, Pennsylvania, on November 14, 1990, to discuss the proposed limited field trial in Pennsylvania (see 55 FR 30730, July 27, 1990). At the public hearing in Harrisburg, Pennsylvania, on November 14, 1990, the first month report of the limited field trial on Parramore Island, Virginia, the proposed protocol for the limited field trial in Pennsylvania, and additional safety data were presented.

Procedures for the Public Meeting

The meeting will be held from 10 a.m. until 12:30 p.m., and will reconvene at 1:30 p.m. until 4 p.m., local time. The meeting may end earlier, however, if the ad hoc expert panel has concluded its discussion and all persons who have requested an opportunity to speak have been heard. Persons who wish to deliver a statement that has been prepared in advance of the meeting, should register at the meeting location with the presiding officer, before the meeting. Pre-meeting registration will be conducted at the meeting location from 9:30 a.m. to 10 a.m., local time, on the day of the meeting. Registered persons will be heard in the order of their registration. Other persons who wish to speak at the meeting will be afforded the opportunity after the registered persons have been heard. It is requested that two copies of any written statements that are presented be provided to the presiding officer at the meeting. If the number of preregistered persons and other participants at the meeting warrants, the presiding officer may limit the time for each presentation in order to allow everyone wishing to speak an opportunity to be heard. Interested persons may appear and be heard in person, by their attorney, or by other representative.

Environmental Assessment and Preliminary Finding of No Significant Impact

Before a veterinary biological product can be licensed, under the Virus-Serum-Toxin Act (VSTA, 21 U.S.C. 151-159), it must be shown to be pure, safe, potent, and efficacious. Field testing under 9 CFR part 103.3 is necessary in order to

satisfy vaccine safety requirements as a prerequisite to licensing vaccines. In the course of reviewing the field testing protocol for the vaccinia vectored rabies vaccine, APHIS assessed the impact on the human environment of authorizing the sponsor to conduct a limited field trial of the product in Pennsylvania.

The environmental assessment and preliminary finding of no significant impact provide the public with documentation of APHIS' review and analysis of environmental effects which would be associated with the gathering of information in this limited field trial.

The facts that support a preliminary finding of no significant impact are summarized below and are contained in the environmental assessment.

1. Genetic engineering procedures were employed to incorporate only the rabies glycoprotein gene within the thymidine kinase (TK) locus of vaccinia virus. The recombinant vaccine cannot induce rabies.

2. The vaccinia rabies glycoprotein (V–RG) recombinant vaccine has been shown to cause no adverse clinical signs or gross or histopathological lesions, yet is fully capable of eliciting an immune response that protects a variety of species from virulent rabies virus challenge. The V–RG recombinant vaccine in target and non-target species is unable to evoke antibodies to the remaining rabies viral structural proteins.

3. The TK gene insertion is a stable characteristic of the V–RG recombinant vaccine with a very low probability of loss or reversion.

4. The V–RG recombinant vaccine does not contain an oncogene or cancer-causing substance, and does not contain any new genetic information to enhance the likelihood of it becoming oncogenic.

5. Biological transmission of the V–RG recombinant vaccine could not be demonstrated in laboratory studies involving more than 40 species of domesticated and wild mammals and birds.

6. In rare instances, contact (probably mechanical) transmission between animals was observed immediately after oral administration of the V–RG vaccine. No adverse effects from these transmissions were observed, and no adverse outcomes are expected from similar exposures during the field trial.

7. Laboratory containment experiments demonstrate that the vaccine is non-pathogenic, safe, and efficacious in a variety of laboratory animal model systems and a number of target and non-target species, including sub-human primates and the major terrestrial wildlife and domestic animal reservoirs of rabies.

8. Previous field trials of V–RG vaccine in Europe and Virginia have not demonstrated adverse effects of V–RG vaccine for workers, local human populations, or wildlife.

9. In the proposed field trial, mitigating measures will be taken to minimize the potential impact of the V–RG vaccine and the field trial itself on human populations and the environment. These measures will include immunization of project workers and restricted access to the trial site during the two-week initial period of vaccine-bait placement.

10. Monitoring of wildlife and human populations in the area of the field trial will continue for one year after the initiation of the trial. Based on the foregoing, APHIS has made a preliminary determination that the field trial of the live vaccinia vectored rabies vaccine that expresses the rabies surface glycoprotein would have no significant impact on the human environment.

The environmental assessment and preliminary finding of no significant impact have been prepared in accordance with (1) the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*); (2) regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (title 40, Code of Federal Regulations (CFR) parts 1500–1506); (3) USDA regulations implementing NEPA (7 CFR 1b); and (4) APHIS guidelines implementing NEPA (44 FR 50381–50384 and 44 FR 51272–51274).

Done at Washington, DC, this 24 day of April, 1991.

Robert Melland,

Acting Administrator Animal and Plant Health Inspection Service.

[FR Doc. 91–10058 Filed 4–26–91; 8:45 am]

BILLING CODE 3410–34–M

Forest Service

Paw Timber Sale, Umpqua National Forest, Douglas County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service, USDA, will prepare an environmental impact statement (EIS) for timber harvest in the Paw Planning Area. The purpose of the EIS will be to develop and evaluate a range of alternatives, including a no action alternative, which respond to the key issues generated during the scoping process. This proposal is in accordance with direction set forth in the 1990 Umpqua National Forest Land and Resource Management Plan which provides for timber harvest within applicable standards, guidelines, and management prescriptions; and will be in compliance with the 1990 Umpqua National Forest Final Environmental Impact Statement and the 1988 Final Environmental Impact Statement for Managing Competing and Unwanted Vegetation. The agency invites written comments on the scope of this project. In addition, the agency gives notice of this analysis so that interested and affected prople are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope and implementation of this proposal must be received by June 1, 1991.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to J. Dan Schindler, District Ranger, Diamond Lake Ranger District, HC 60 Box 101, Idleyld Park, Oregon 97447.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this EIS should be directed to Mike Hupp, Timber Management Assistant, Diamond Lake Ranger District, HC 60 Box 101, Idleyld Park, Oregon 97447; phone (503) 672–5469.

SUPPLEMENTARY INFORMATION: The Paw EIS Planning Area encompasses the Paw and Westlake Watershed Analysis Areas (WAAs) located within the Clearwater Resource Scheduling Area (RSA). The Paw WAA encompasses 5442 acres south of state highway 138 and the Clearwater River, north of Mt. Bailey and Rodley Butte, east of Bear Creek, and west of Lake Creek; and is located in all or portions of sections 3, 4, 8, 9, 10, 11, 14, 15, 16, 21, 22, 23, 27, 28, T27S, R5E, Willamette Meridian, Douglas County, Oregon. The Westlake WAA encompasses 4776 acres south of state highway 138 and the Clearwater River, north of Mt. Bailey and Rodley Butte, east of Lost Creek, and west of Lake Creek; and is located in all or portions of sections 1, 2, 3, 10, 11, 12, 13, 14, 23, 24, 26, 27, T27S, R5E, Willamette Meridian, Douglas County, Oregon.

The 1990 Umpqua National Forest Land and Resource Management Plan allocates the Paw EIS Planning Area into Management Areas 1, 10, and 11. Management Area 1 focuses upon providing opportunities for unroaded recreation primarily in a semiprimitive environment. Management Area 10 is primarily devoted to producing timber on a cost efficient, sustainable basis consistent with other resource objectives. Management Area 11 is

primarily managed to provide big game winter range habitat and timber production consistent with other resource objectives.

The preliminary key issues identified to date include the following:

1. Potential effects on the northern spotted owl and it's critical habitat.
2. Potential effects to the roadless character of the Mount Bailey Roadless Area.
3. Potential effects on biodiversity by fragmentation of large contiguous areas of natural forest.
4. Potential effects on elk travel corridors inside elk transitory summer range.
5. The economics of harvesting mountain hemlock ecotype inside the Mount Bailey Roadless Area.
6. The harvest of timber stands heavily infected with root disease.

The proposed timber sale will harvest 606 acres containing 18.6 million board feet of timber and to construct 2.42 miles of road. Logging systems would be primarily ground based (loader, cat, or skidder) with some units being skyline logged. Silvicultural prescriptions would consist of a combination of seed tree, shelterwood, clearcut, partial cut, and final harvest removal methods.

Public participation will be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies; and other individuals or organizations who may be interested in or affected by the proposed action. This information will be used in preparation of the draft EIS. The scoping process includes the following:

1. Identification if issues.
2. Identification of key issues to be analyzed in depth.
3. Elimination of insignificant issues, issues which have been covered by a relevant previous environmental process, and issues that could be successfully mitigated.
4. Exploration of additional alternatives based on the key issues identified during the scoping process.
5. Identification of potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

An open house will be held on June 7, 1991 at the Umpqua National Forest Superintendent's Office to allow review of the information gathered to date.

Licenses and permits required to implement the proposed action are already held by the Forest Service who is the lead agency for this project.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by June, 1992. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. EPA will publish a notice of availability of the draft EIS in the **Federal Register.**

The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register.** It is very important that those interested in the management of the Umpqua National Forest participate at that time.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519,553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 f. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Hertages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The final EIS is scheduled to be completed by September, 1992. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS; and applicable laws, regulations, and policies considered in making the decision regarding this proposal.

The Forest Supervisor, Umpqua National Forest, is the responsible official. As the responsible official he will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulations (36 CFR 217).

Dated: April 19, 1991.

Claude C. McLean,

Acting Forest Supervisor.

[FR Doc. 91-10015 Filed 4-26-91; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Office of the Secretary

Advisory Committee: Availability of Report on Closed Meetings

AGENCY: Department of Commerce.

ACTION: Announcing public availability of report on closed meetings of advisory committees.

SUMMARY: The Department of Commerce has prepared its report on the activities of closed or partially-closed meetings of advisory committees as required by the Federal Advisory Committee Act.

ADDRESSES: Copies of the reports have been filed and are available for public inspection at two locations.

Library of Congress, Newspaper and Current Periodicals Reading Room, room LM133, Madison Building, 1st and Independence Avenues, SE., Washington, DC 20540.

Department of Commerce, Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th and Constitution Avenue, NW., Washington , DC 20230 Telephone (202) 377-4115.

SUPPLEMENTARY INFORMATION: The reports cover the closed and partially-closed meetings held in 1990 of 39 committees and their subcommittees, the names of which are listed below.

Automated Manufacturing Equipment Technical Advisory Committee
—Joint Factory Computing and Communication Subcommittee

Biotechnology Technical Advisory Committee

Committee of Chairmen of Industry Advisory Committees for Trade Policy Matters (TPM)

Computer Peripherals, Components, and Related Test Equipment Technical Advisory Committee
—Joint Factory Computing and Communications Subcommittee

Computer System Security and Privacy Advisory Board
Computer Systems Technical Advisory Committee
—Joint Factory Computing and Communications Subcommittee
—Software Subcommittee
Electronic Instrumentation Technical Advisory Committee
—Joint Factory Computing and Communications Subcommittee
—Laser and Opto-Electronic Subcommittee
Industry Policy Advisory Committee for Trade Policy Matters (TPM)
ISAC on Aerospace Equipment for TPM
—Military Trade Subcommittee
—Space Equipment Subcommittee
ISAC on Capital Goods for TPM
—Government Procurement Subcommittee
ISAC on Chemicals and Allied Products for TPM
ISAC on Consumer Goods for TPM
ISAC on Electronics and Instrumentation for TPM
ISAC on Energy for TPM
ISAC on Ferrous Ores and Metals for TPM
ISAC on Footwear, Leather, and Leather Products for TPM
ISAC on Industrial and Construction Material and Supplies for TPM
ISAC on Lumber and Wood Products for TPM
ISAC on Nonferrous Ores and Metals for TPM
ISAC on Paper and Paper Products for TPM
ISAC on Services for TPM
ISAC on Small and Minority Business for TPM
ISAC on Textiles and Apparel for TPM
ISAC on Transportation, Construction, and Agricultural Equipment for TPM
ISAC on Wholesaling and Retailing for TPM
Importers and Retailers' Textile Advisory Committee
Industry Functional Advisory Committee on Customs Matters for TPM
Industry Functional Advisory Committee on Intellectual Property Rights for TPM
Industry Functional Advisory Committee on Standards for TPM
—Subcommittee on Conformity Assessment
—Subcommittee on Standards and Standards Process
Judges Panel of the Malcolm Baldrige National Quality Award
Management-Labor Textile Advisory Committee
Materials Technical Advisory Committee
Militarily Critical Technologies List Technical Advisory Committee
National Medal of Technology Nomination Evaluation Committee
Semiconductor Technical Advisory Committee
Telecommunications Equipment Technical Advisory Committee
—Fiber Optics Subcommittee
—Radio Subcommittee
—Switching Subcommittee
Transportation and Related Equipment Technical Advisory Committee
U.S. Automotive Parts Advisory Committee
Visiting Committee on Advanced Technology

FOR FURTHER INFORMATION CONTACT: Jan Jivatode, Management Analyst, Office of the Secretary, Department of Commerce, Washington, DC 20230, Telephone (202) 377–4115.

Dated: April 22, 1991.

Jan Jivatode,

Management Support Division, Office of Federal Assistance and Management Support.

[FR Doc. 91–9986 Filed 4–26–91; 8:45 am]

BILLING CODE 3510–FA–M

International Trade Administration

[A–412–806]

Preliminary Determinations of Sales at Less Than Fair Value: Gene Amplification Thermal Cyclers and Subassemblies Thereof, From the United Kingdom

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that gene amplification thermal cyclers and subassemblies thereof (GATCs) from the United Kingdom are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of GATCs from the United Kingdom, as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by July 8, 1991.

EFFECTIVE DATE: April 29, 1991.

FOR FURTHER INFORMATION CONTACT: Michelle A. Frederick, or David J. Goldberger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–0656 or (202) 377–4136, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

The Department preliminarily determines that GATCs from the United Kingdom are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation on December 13, 1990 (55 FR 51307), the following events have occurred. On December 27, 1990, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports of GATCs from the United Kingdom (55 FR 48302).

On January 14, 1991, the Department presented its questionnaire to LEP Scientific Limited (LEP), which accounts for more than 60 percent of exports by volume to the United States during the period of investigation (POI), in accordance with 19 CFR 353.42(b). In February 1991, we received responses to the questionnaire, We issued a supplemental questionnaire in March 1991 and received a response to it prior to the date of this preliminary determination.

Scope of Investigation

The products covered by this investigation are certain gene amplification thermal cyclers, consisting of Peltier-effect in vitro GATCs, whether assembled or unassembled, and the subassemblies thereof specified below. GATCs are microprocessor-based reaction controllers that regulate temperatures of biologic reagents through a programmed and highly controlled thermal regime. GATCs incorporate a metal sample block, one or more thermoelectric modules, one or more electronic thermal sensors, a heat exchanger, power supply circuitry, microprocessor-based logic circuitry, software, and a housing or enclosure. GATCs are used in a variety of biotechnology applications, such as in vitro gene amplification, and sequencing and radionucleotide labeling reactions. Peltier-effect machines use one or more thermoelectric modules for cooling the biologic samples, and the thermoelectric modules and/or electric resistive heaters for heating the biologic samples. Excluded from this investigation are vapor compression thermal cyclers.

which use a reversed Rankine cycle apparatus, and heat-only thermal cyclers.

The following subassemblies are included in the scope of the investigation when they are manufactured according to specifications and operational requirements for use only in a GATC as defined in the preceding paragraph: (a) The sample block/thermoelectric sensor/heat exchanger subassembly, which consists of the sample block, one or more thermoelectric modules, one or more electronic thermal sensors, and a heat exchanger, and which can include an electric resistive heater; (b) the housing or enclosure, whether finished or unfinished, for the GATC; (c) the membrane keypad used to program and control a GATC; and (d) the software to operate the GATC. GATCs are currently classifiable under the Harmonized Tariff Schedule (HTS) subheading 8419.89.5075. GATC subassemblies are currently classifiable under HTS subheading 8419.90.9060. The HTS subheadings are provided for convenience and customs purposes. The written description remains dispositive.

Period of Investigation

Normally, the Department selects as its POI the six-month period ending in the month in which the petition is filed. However, in this investigation, LEP reported that all of its U.S. sales were made prior to this six-month period. Consequently, we extended the POI to March 1, 1990 through November 30, 1990, as permitted by 19 CFR 353.42(b).

Such or Similar Comparisons

We have determined for purposes of the preliminary determination that all the products covered by this investigation comprise a single category of "such or similar" merchandise.

Fair Value Comparisons

To determine whether sales of GATCs from the United Kingdom to the United States were made at less than fair value, we compared the United States price to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. We compared U.S. sales of GATCs to the most similar home market sales of GATCs. We also compared sales of GATCs on the same commercial level of trade, in accordance with 19 CFR 353.58.

United States Price

We based United States price on purchase price, in accordance with section 772(b) of the Act, as all U.S. sales were made to an unrelated party prior to importation into the United States. We calculated purchase price based on f.o.b. factory or delivered prices. We made deductions, where appropriate, for foreign inland freight, U.S. duty, brokerage, inland freight and airline entry fee, in accordance with section 772(d)(2) of the Act. In accordance with section 772(d)(1)(C) of the Act, we added to the United States price, the amount of the United Kingdom value-added tax that would have been collected if the merchandise had not been exported.

Foreign Market Value

In order to determine whether there were sufficient sales of GATCs in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of GATCs to the volume of third country sales of GATCs, in accordance with section 773(a)(1) of the Act. LEP had a viable home market with respect to sales of GATCs made during the POI.

We calculated FMV based on f.o.b. factory prices to unrelated customers in the home market. We made deductions, where appropriate, for discounts. We deducted home market packing costs and added U.S. packing costs.

Pursuant to 19 CFR 353.56, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses, post-sale warehousing, advertising expenses, warranty expenses, and royalty payments. We also made a circumstance of sale adjustment for promotional expenses for purposes of this determination. We will, however, further examine the promotional expense and how it was incurred at verification. We made adjustments for physical differences in merchandise, in accordance with 19 CFR 353.57. Finally, we made a circumstance of sale adjustment for differences in the amounts of value-added taxes.

We recalculated LEP's imputed credit claim on its home market sales, as the interest rate claimed by LEP in its questionnaire response was inconsistent with the support document.

We also recalculated LEP's imputed credit expense on U.S. sales because LEP did not support its claim that it had access to financing at U.S. interest rates. In addition, LEP calculated its credit expense on certain U.S. sales based on warehouse withdrawal date, rather than shipment date. We recalculated the credit expense using the home market interest rate and the appropriate credit period.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we will verify all information that we determine is acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 773(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of GATCs from the United Kingdom, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/Producer/Exporter	Margin percentage
LEP Scientific Limited	9.87
All Others	9.87

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than June 13, 1991, and rebuttal briefs no later

than June 20, 1991. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on June 24, 1991, at 10 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Persons interested in attending the hearing should ascertain with the Department the date and time of the hearing as the scheduled date approaches to ensure that circumstances have not required a change in plans.

Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, within ten days of the publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673(f)) and 19 CFR 353.15.

Dated: April 23, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-10068 Filed 4-23-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-001]

Final Results of Antidumping Duty Administrative Review: Potassium Permanganate from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On December 31, 1990, the Department of Commerce published the preliminary results of its antidumping duty administrative review on potassium permanganate from the People's Republic of China (PRC). The review covers the China National Chemicals Import and Export Corporation ("SINOCHEM"), including all production facilities, and eight third country resellers of potassium permanganate to the United States during the period January 1, 1989, through December 31, 1989.

We gave interested parties an opportunity to comment on our preliminary results. Based upon the comments received, our final results are unchanged from the preliminary results with the exception of the rate for third country new shippers.

EFFECTIVE DATE: April 29, 1991.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Graham or Stephanie L. Hager, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-4105 or 377-5055, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On December 31, 1990, the Department of Commerce ("the Department") published in the **Federal Register** (55 FR 53581) the preliminary results of its administrative review of the antidumping duty order on potassium permanganate from the PRC (48 FR 57347, January 31, 1984). Counsel for petitioner and two importers requested a public hearing in this review. Case briefs were filed by all parties on January 28, 1991 and rebuttal briefs were filed by the petitioner and one importer on February 4, 1991. A public hearing was held on February 11, 1991. Surrebuttal briefs were filed by the petitioner and one importer on February 12, 1991.

We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Act").

Scope of the Review

Imports covered by this review are shipments of potassium permanganate, an inorganic chemical produced in free-flowing, technical, and pharmaceutical grades. During the review period, potassium permanganate was classifiable under item 2841.60.0010 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Review Period

The review period is Janaury 1, 1989, through December 31, 1989.

Interested Party Comments

Petitioner's and interested party's comments are discussed below.

Comment 1: Novachem, an importer, argues that it has not been given the opportunity to meaningfully participate in this review. On August 16, 1990, the Department informed Novachem that it was considered an interested party and would be served **Federal Register** notices. Novachem believed that it would be served copies of all submissions made by other parties. However, between August 17, 1990 and December 10, 1990, petitioner failed to serve Novachem any of its submissions. On this basis, Novachem contends that it has not been allowed to meaningfully participate in this review, and therefore the Department should apply the margin calculated in the original investigation to all entities. Novachem requests that petitioner's submissions from August 17, 1990 to the date of publication of the preliminary results be rejected because they did not comply with the Department's regulations (*i.e.*, 19 CFR 353.31(g)).

Novachem cites *Blaw Knox Construction Equipment Co.* v. *United States*, 596 F. Supp. 476 (Ct. International Trade 1984) ("Blaw Knox"), in which the CIT remanded the review to the Department because it based its final margin results on information provided by respondent without giving petitioner an opportunity to comment. Novachem contends that the CIT ruled that petitioner was entitled to notice so it could meaningfully participate in the review. Likewise, Novachem argues that its imports should receive the rate from the original investigation (39.63 percent) since it has been denied meaningfully participation in this case.

Petitioner argues that Novachem has given the opportunity to meaningful participate in this review. Petitioner states that Novachem was notified of the proceeding by the Department on August 16, 1990, when it was sent the notice of initiation of review and a copy of the Department's regulations. Petitioner also states that according to the regulations, in order to be served by other parties, Novachem would have to have been on the service list. Petitioner argues that Novachem should have clarified this point with the Department. Petitioner cites *Timken Co.* v. *United States* 699 F. Supp. 300, 309 (Ct. International Trade) ("Timken"), in which the CIT determined that parties to trade proceedings must be afforded adequate notice and opportunity to be heard. Petitioner argues that Novachem, having been notified of the initiation, had the opportunity to comment on issues and review the public file. Petitioner further points out that Novachem has had sufficient time since receiving the preliminary results in which it could have commented on the determination. Petitioner contends that this fact distinguishes this case from

Blaw Know, in which the Department took final action without giving notice to petitioner.

DOC Position: On August 16, 1990, the Department informed Novachem that it was an interested party and would be served copies of Federal Register notices. As an interested party that requested that it be considered a party to the proceeding, Novachem should have been served other parties' submissions in addition to Federal Register notices. In this case, while Novachem was included on the interested party list, the Department's service list was not updated to include Novachem. As a result, petitioner failed to serve Novachem copies of its submissions. While the Department's failure to update the service list may have delayed Novachem's response to petitioner's BIA report, we have allowed Novachem to submit factual information in support of its arguments. Thus, the Department did not deny Novachem the right to meaningfully participate in this review.

In Timken, the Court of International Trade ruled that parties to the proceeding must be afforded adequate notice and an opportunity to be heard. In this case, Novachem was notified of the preliminary determination nearly three months prior to the scheduled date of the final determination and fully participated in this proceeding through written and oral argument. Novachem submitted a case brief, two rebuttal briefs, and participated in the public hearing. As such, this case is clearly distinguishable from Blaw Knox where the Department took final action without providing petitioner with notice or opportunity to comment.

Comment 2: Petitioner argues that the Department should consider SINOCHEM to include all PRC manufacturers, producers and exporters of the subject merchandise, whether know, unknown, existing or new. They assert that such a decision would be consistent with the Department's final determination in the original investigation, and accurately reflect the extent of PRC government control and coordination of the production and export of the subject merchandise. Petitioner further argues that such a decision would also be consistent with the Department's determination in Final Results of the Antidumping Administrative Review of Iron Construction Castings from the People's Republic of China (56 FR 2742, 2744, January 24, 1991) ("Castings") to establish a single country-wide rate for the PRC. Petitioner asserts that if the BIA rate is not applied to all entries of the subject merchandise, the PRC will be allowed to continue dumping.

Novachem argues that it is not a permissible adverse inference and use of BIA for the Department to "deem" all manufacturing, production and export entities in the PRC of the subject merchandise to be part of SINOCHEM. Novachem states that the use of BIA with regard to PRC corporations not covered by the review and which have never received a Department request for information is contrary to the rule of *Olympic Adhesives, Inc.* v. *United States* 899 F.2d 1565, 1574 (Fed. Cir. 1990) ("Olympic Adhesives"). Novachem also states that petitioner's attempt to treat all of the PRC as one entity, is contrary to U.S. law and policy. Novachem asserts that the Foreign Sovereign Immunities Act of 1976, Public Law No. 94–583, 90 Stat. 2981, codified at 28 U.S.C. 1330, 1332(a)(2), 1391(g), 1441(d) and 1602–1611 (FSIA), requires distinction be made between a foreign state and an instrumentality owned by a foreign state, and one instrumentality and another.

Novachem further argues that it is wrong for the Department to assume, based on the Castings notice, that all national import/export corporations are one entity, controlled by the PRC government. Although it was recognized in Castings that more than MINMETALS was subject to the review, the Department assigned a single rate for all exports without differentiating between companies. The Department should not employ this same methodology in this review.

DOC Position: Producers/exporters of the subject merchandise in the PRC forfeited their opportunity to argue the separation issue by not responding to the Department's questionnaire. Even if the Department were to consider arguments for separate rates, because there are no facts on the record relating to the independence of producers/exporters, there would be no legal basis for such a determination.

Comment 3: Petitioner argues that the Department should consider all of the subject merchandise exported by all existing and future PRC and third country exporters or resellers, whether or not deemed separate from SINOCHEM, as SINOCHEM product and therefore, subject to the SINOCHEM rate. Petitioner contends that there is no evidence that there are any production facilities of the subject merchandise in the PRC, Hong Kong, or the entire Far East, other than SINOCHEM's. On this basis, petitioner argues that the cash deposit rate set by the Department in its final results should reflect that (1) There are no other known manufacturers/producers/exporters of the subject merchandise other than SINOCHEM, (2) no basis exists to establish a separate rate for any PRC or third country exporter or reseller because these firms are trading dumped SINOCHEM product, (3) future entries from new PRC exporters and third country resellers who do not manufacture the product should be subject to the SINOCHEM rate, and (4) no "new" producer should receive the lower deposit rate in the investigation unless that producer clearly demonstrates that it is independent from SINOCHEM and the PRC state-run chemical sector.

Novachem argues that since it has not been allowed to meaningfully participate in this review, the Department should reject petitioner's claim that all manufacturers, producers, and resellers should be given the BIA rate. Novachem cites Blaw Knox, in which the CIT remanded the review to the Department because it based its final margin results on information provided by respondent without giving petitioner an opportunity to comment. Since Novachem was not allowed to meaningfully participate in this review, the Department should apply the margin calculated in the original investigation to all entities.

DOC Position: We have determined that all of the subject merchandise exported by existing and future PRC producers/exporters should be subject to the single rate established for the PRC. We disagree, however, with petitioner that all existing and future third country exporters or resellers should be assigned the rate applied to SINOCHEM. Our normal practice in an antidumping proceeding involving a market economy is to assign specific rates to reviewed companies. New exporters are assigned the highest non-BIA rate calculated in a particular segment of the proceeding. However, if there are no non-BIA rates in the current segment, they are assigned the highest non-BIA rate from the most recent segment of the proceeding. In this review, the Department has assigned a single country-wide rate to all producers/exporters in the PRC of the subject merchandise because there is no information on the record relating to the independence of producers/exporters in the PRC which would provide a legal basis for assigning separate rates. The Department has determined however, that it would be inappropriate to apply the country-wide rate for the PRC to new third country resellers. These resellers should not automatically be

consolidated with the PRC producers, especially since they are located in a separate market economy. Therefore, we have determined that these third country resellers should be assigned a rate based on the Department's normal practice in a market economy proceeding. On this basis, the Department has established a rate for new third country exporters equal to the most recent non-BIA rate, which is the rate from the original investigation. Petitioner has not provided us with a sufficient basis to depart from our normal methodology.

Comment 4: Novachem objects to the Department's use of Thailand as a surrogate for the PRC. It states that the use of Thailand as a surrogate is punitive and misinterprets the BIA provision. The BIA provision should be used to draw adverse inferences concerning factors of production, not the choice of an appropriate surrogate country. Novachem cites *Olympic Adhesives, Inc.* v. *United States*, 899 F.2d 1565, 1571 (Fed. Cir. 1990) in which the Court of Appeals for the Federal Circuit stated that "section 1677e(b) clearly requires non-compliance with an information request before resort to the best information rule is justified, whether due to refusal or mere inability." In this case, Novachem asserts, respondent was not requested to provide surrogate country information. Therefore, BIA should not be used for the choice of a surrogate.

Novachem also states that the Final Determination of Sales at Less than Fair Value: Industrial Nitrocellulose from the PRC (55 FR 21051, 1990) ("Nitrocellulose") memorandum cited by petitioner is not applicable because it is based on 1987 statistics, whereas the memorandum the Department correctly utilized in this review, which deleted Thailand from the list of surrogates, contains the most recent statistics which are for 1988. The Department's concurrence memorandum listed six countries as the most appropriate surrogates for the PRC, and Thailand was not included on this list.

Novachem contends that while Thailand was used as the surrogate in the original investigation, the economy has changed drastically since that time. According to Novachem: (1) Thailand is considered to be one of the world's 37 lower-middle income countries with an average per-capita GNP of $1,000; (2) the PRC is considered one of the world's 42 low-income countries, with an average per-capita GNP of $330; and (3) both wages and prices are higher in Thailand than in the PRC.

Novachem cites two recent cases involving chemical products in which the Department used India as a surrogate for the PRC (see, Initiation of Antidumping Duty Investigation; Certain Sulphur Chemicals from the PRC (55 FR 32, 116, August 7, 1990) and Preliminary Determination of Sales at Less than Fair Value; Sodium Thiosulfate from the PRC (55 FR 51,140, December 12, 1990)). Novachem asserts that the Department should (1) Reject the use of Thailand as a surrogate for the PRC and adopt one of the countries suggested in the Office of Policy memorandum, (2) keep the deposit rate at the level determined in the original investigation, or (3) re-open the review.

Petitioner supports the Department's choice of Thailand as a surrogate for the PRC. In applying BIA, the Department has the discretion to determine which information it deems the best available (see, Final Determination of Sales at Less than Fair Value; Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the PRC (56 FR 241, 245, 1990)). Petitioner rejects Novachem's assertion that the Department should have requested surrogate country information from respondent. Given the PRC companies' refusal to respond to the Department's questionnaire, the petitioner questions the likelihood of those same companies providing information on surrogate countries. Petitioner asserts that although Thailand was not included on the list in the Department's concurrence memorandum, it can still be considered comparable to the PRC. Petitioner specifically claims that since most of the production costs of potassium permanganate involves globally traded commodities, and labor and other factors of production are a smaller proportion of the total cost, the use of Thailand as a surrogate has not resulted in a skewed margin. Petitioner further states that Thailand is a reasonable surrogate to use because (1) It was based on verified factor of production information on the public record in the original investigation, (2) the same surrogate country was used in the investigation and actual factor costs were obtained from that country, and (3) "low-end" or "mid-point" prices for inputs were used. Petitioner contends that the margin in the BIA report more accurately reflects the current rate of dumping than the original rate of 39.63 percent.

In several recent PRC cases, petitioner claims that the Department has used Thailand as a surrogate for the PRC. Most recently, in Nitrocellulose, the Department used Thailand as a surrogate, based on a December 1989 memo which lists Thailand as one of the seven most comparable economies for the PRC. The Department also used Thailand for its Final Results of Antidumping Duty Administrative Review; Barium Chloride from the PRC (54 FR 53, January 3, 1989).

Petitioner also argues that this case is distinguishable from Olympic Adhesives in which the Department improperly applied BIA to a company which had been cooperative. In this case, respondent has not cooperated.

DOC Position

Regarding Novachem's objections to the use of Thailand as a surrogate, we note that the list of six countries identified in the October 12, 1990 Office of Policy memorandum is not exhaustive. This memorandum, in accordance with agency practice, considered three factors in selecting a surrogate country for this review: (1) Per capita gross national product ("GNP"); (2) the growth rate of per capita GNP; and (3) the national distribution of labor. While Thailand is not on the list of preferred surrogates, the memorandum notes that Thailand has been used in the past as a surrogate for the PRC. Despite the changes in Thailand's level of development, the Department does not consider the comparability of Thailand and the PRC to be so disparate as to render Thailand an inappropriate surrogate for BIA purposes. Thus, the Department's reliance on petitioner's data is reasonable.

In this instance, respondents failed to submit any response to the Department's questionnaire. For this reason, the Department was forced to rely on BIA in its preliminary and final results. In selecting the information to use as BIA, the Department reviews the information on the record and selects that which it believes is the most appropriate. BIA is not necessarily the most accurate information but a choice of information on the record which is usually prejudicial to respondents for non-compliance with the Department's requests for information. This well-established proposition follows from the long-standing tenet that the best information rule is a rule of reasonable adverse inference designed to induce respondents, in the absence of any subpoena power vested in the Department, to submit timely, complete, and accurate questionnaire responses.

Comment 5: Novachem argues that petitioner's public summary of the BIA report is inadequate because petitioner failed to properly range the proprietary data contained in the report. Novachem contends that since the Department denied Novachem's APO application, it should also require petitioner to

properly range the proprietary data in its BIA report.

Petitioner rejects Novachem's claim that the public version of its BIA report was improperly ranged. Rather, they assert that it was filed in accordance with § 353.32(b)(2).

DOC Position: Section 353.32(b)(2) of the Department's regulations states that "all requests for proprietary treatment shall include or be accompanied by an adequate public summary of all proprietary information or a statement itemizing those portions of the proprietary information which cannot be summarized adequately and all arguments supporting that conclusion for each portion." Petitioner's August 27, 1991 submission (the BIA report) included an explanation of why certain portions of the report were designated proprietary and why it was impossible for petitioner to range or summarize the cost figures included in the report. We have determined that petitioner's treatment of proprietary information complies with § 353.32(b)(2).

Comment 6: C.I. Specialty Chemicals, Inc. (CISC), an importer, argues that the information relied upon by the Department in its preliminary results is not accurate and that the Department should reassess the validity of the basis of its margin calculation. CISC contends that it has obtained certain information which demonstrates that the margin is too high and should be reduced considerably. Based on this information, CISC contends (1) The Department wrongly relied on Bank of China exchange rates in calculating PRC prices and costs, (2) the Department incorrectly used an imported price for potassium hydroxide and manganese dioxide for the surrogate country when the PRC had its own domestic sources of products, and (3) that a comparison of the price of finished potassium permanganate sold to the PRC Foreign Trade Departments, which CISC obtained from confidential documents, to an FOB import price for potassium permanganate published by the United States Government for 1989, indicates that there is little or no dumping margin.

Petitioner argues that the Department should not consider the facts presented in CISC's brief. It asserts that the information was submitted too late to be considered in the context of this review (see 19 CFR 353.31(a)). Petitioner contends that the information is specific to the PRC chemical industry and, therefore, should not be considered since respondents refused to respond to the Department's questionnaire. Petitioner also contends that the information is irrelevant since the Department does not consider exchange rates and prices in a non-market economy investigation.

DOC Position: We agree with petitioner's assertion that the factual information submitted by CISC was untimely and, therefore, we did not consider it in the context of this review. Section 353.31(a)(ii) of the Department's regulations states that "submissions of factual information for the Secretary's consideration shall be submitted not later than the earlier of the date of publication of notice of preliminary results of review or 180 days after the date of publication of notice of initiation of the review." The Department received CISC's factual submission 231 days after the date of the initiation of this review, and after the issuance of the Department's preliminary results. On this basis, the Department did not consider CISC's factual submission.

Final Results of Review

Based on comments received, our final results are unchanged from those presented in the notice of preliminary results of review except for the rate assigned to third country new shippers. We determine that the following margins exist for the period January 1, 1989, through December 31, 1989:

Manufacturer/exporter/Hong Kong resellers	Margin (percent)
China National Chemicals Import and Export Corporation and all other PRC producers	128.94
Far Ocean Trading Company	128.94
Go Up Company	39.63
Hip Fung Trading Company	39.63
K L & Company	128.94
Landyet Company Ltd	128.94
Sam Wing International, Ltd	128.94
Tin Sing Chemical Engineers, Ltd	39.63
Yue Pak Company, Ltd	128.94

Go Up Company, Hip Fung Trading Company and Tin Sing Chemical Engineers responded to the Department's questionnaire by stating that they had no shipments during the review period. The Department verified this claim with the Customs Service. Therefore, the margin listed is that from the original investigation. The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for all future entries of the subject merchandise from the PRC and the following third country resellers (e.g., Far Ocean Trading Company, K L & Company, Landyet Company, Ltd., Sam Wing International, Ltd., Yue Pak Company, Ltd.) will be 128.94 percent *ad valorem;* (2) the cash deposit for Go Up Company, Hip Fung Trading Company, and Tin Sing Chemical Engineers, Ltd., will be 39.63 percent *ad valorem;* (3) for any shipments of this merchandise produced or exported by current third country exporters not covered in this review, the cash deposit will continue to be at the rate published in the final results of the original less than fair value investigation, which is equal to 39.63 percent *ad valorem;* and, (4) the cash deposit rate for any future entries of this merchandise from a new third country exporter, not covered in this review or in the original less than fair value investigation, whose first shipments occurred after December 31, 1989, and who is unrelated to the reviewed firms or any previously reviewed firm, will be 39.63 percent *ad valorem.*

These deposit requirements are effective for all shipments of Chinese potassium permanganate entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of this Act (19 U.S.C. 1675(a)(1) and 19 CFR 353.22(c)(8).

Dated: April 22, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-10069 Filed 4-26-91; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Coastal Zone Management: Federal Consistency Appeal by James and Uta Stein From an Objection by State of Washington Department of Ecology

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal and request for comments.

On January 18, 1991, the Secretary of Commerce (Secretary) received a notice of appeal from Alexander W. Mackie, Esquire, on behalf of James and Uta Stein (Appellants). The Steins are appealing to the Secretary under section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA) and the Department's implementing regulations, 15 CFR part 930, subpart H. The appeal is taken from an objection by the State of Washington, Department of Ecology, (State) to Appellants' consistency

certification that their proposal to build a 600-foot long sea wall or bulkhead, for which a U.S. Army Corps of Engineers' permit must be obtained, is consistent with the State's Coastal Zone Management Program. The proposed bulkhead would start at the southwest corner of the property and extend 600 feet in a northeasterly direction at the base of the sea cliff. It would be approximately 5 to 6 feet high, and backfill would be placed between the cliff and the bulkhead. Six-foot-high wing walls would be extended from the bulkhead to the toe of the cliff at each end of the bulkhead.

The legal description of Appellants' property is:

A portion of section 5, township 19 north, range 2 West, Willamette Meridian.

The property address is 3600—85th Avenue NW., Olympia, Washington, in Thurston County. The property is located on the north side of 85th Avenue NW. and adjacent to the east side of Totten Inlet.

The CZMA provides that a timely objection by a state to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). Section 307(c)(3)(A). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121.

Appellants request that the Secretary override the State's consistency objections based on Ground I. To make the determination that the proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that: (1) The proposed activity furthers one or more of the national objectives or purposes contained in sections 302 or 303 of the CZMA, (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest, (3) the proposed activity will not violate the Clean Air Act or the Federal Water Pollution Control Act, and (4) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with the State's coastal management program. 15 CFR 930.121.

Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121. Comments are due within 30 days of the publication of this notice and should be sent to Susan K. Auer, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue NW., suite 603, Washington DC 20235. Copies of comments should also be sent to M.F. Palko, Department of Ecology, Mail Stop PV-11, Olympia, Washington 98504-8711.

All nonconfidential documents submitted in this appeal are available for public inspection during business hours at the offices of the Department of Ecology, Environmental Review, 7240 Martin Way, Lacey, Washington 98503, and the Office of the Assistant General Counsel for Ocean Services, NOAA.

FOR ADDITIONAL INFORMATION CONTACT: Susan K. Auer, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue NW., suite 603, Washington, DC 20235, (202) 673-5200.

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance]

Dated: April 23, 1991.

Thomas A. Campbell,

General Counsel.

[FR Doc. 91-10066 Filed 4-26-91; 8:45 am]

BILLING CODE 3510-08-M

South Atlantic Fishery Management Council; Amended Meeting Agenda

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The agenda for the public meeting of the South Atlantic Fishery Management Council (Council), at the Town and Country Inn, 2008 Savannah Highway, Charleston SC (803-571-1000), on April 29—May 3, 1991, previously published at 56 FR 16073 on April 19, 1991, has been amended. All other information as originally published remains unchanged.

On April 30, 1991, from 2:30 p.m., to 5 p.m., the Council will hold a closed meeting (not open to the public), of its Advisory Panel (AP) Selection Committee. The Committee will review applicants and choose members for the new Wreckfish AP, and for the vacancy on the Snapper-Grouper AP.

For more information contact Carrie Knight, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, suite 306, Charleston, SC 29407, telephone (803) 571-4366.

Dated: April 24, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-10061 Filed 4-26-91; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent Application Serial Number 7-536,860, "Monoclonal Antibody Immunoassay Kit for Avian REV" to Consultants for Applied Biosciences, Inc., having a place of business at Wilton, Connecticut. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the reqirements of 35 U.S.C. 209 and 37 CFR 404.7.

The invention relates to the combination of monoclonal antibodies which enables an increase in sensitivity of an ELISA assay for diagnosing reticuloendotheliosis virus in poultry flocks and for detecting new strains and variants of the viral subtype.

The availability of the invention for licensing was published in the **Federal Register** Vol. 55, No. 163, p.34309 (1990). A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning 703/487-4650 or by writing to Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Douglas J. Campion, Center for Utilization of Federal Technology, NTIS, Box 1423, Springfield, VA 22151. Properly filed competing applcations received by the NTIS in response to this notice may be

considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Patent Licensing Specialist, Center for Utilization of Federal Technology, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 91-9979 Filed 4-26-91; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

April 16, 1991.

The USAF Scientific Advisory Board Arnold Engineering Development Center (AEDC) Advisory Group will meet on June 25-26, 1991 from 8 a.m. to 4 p.m. Central Time at Arnold Air Force Base, Tennessee.

The purposes of this meeting will be to acquaint the new AEDC Advisory Group members with the mission and test facilities of AEDC and for AEDC senior leadership to receive feedback from the Advisory Group on AEDC's ASTF modifications to support NASP. This meeting will be closed to the public, in accordance with section 552b(c) of title 5, United States Code, specifically subparagraph (1).

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-8404.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 91-9972 Filed 4-26-91 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

Foreign Languages Assistance Program

AGENCY: Department of Education.

ACTION: Notice of proposed interpretations and designation of critical foreign languages.

SUMMARY: For the purposes of the Foreign Languages Assistance Act of 1988 enacted in title II, part B, of the Elementary and Secondary Education Act, the Secretary proposes to designate Chinese (all dialects), Japanese, Korean, Arabic (all dialects), and Russian as critical foreign languages. The proposed designation would limit Federal financial assistance under this program to foreign language instruction projects that focus on one or more of the designated languages. The Secretary also proposes certain interpretations of the Act that are needed to administer the program.

DATES: Comments must be received on or before May 29, 1991.

ADDRESSES: All comments concerning this notice should be addressed to Alicia C. Coro, Director, School Improvement Programs, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202-6437.

FOR FURTHER INFORMATION CONTACT: Doris Crudup, School Effectiveness Division, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202-6437, (202) 401-1062. Deaf and hearing impaired individuals may call the Federal Duty Party Relay Service at 1-800-877-8339 (in the Washington, DC area code, telephone 708-9300 between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The Foreign Languages Assistance Program is authorized by title II, part B, of the Elementary and Secondary Education Act of 1965, as amended by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary Eduction School Improvement Amendments of 1988 (P.L. 100-297). It is a new formula grant program that is intended to provide financial assistance to State educational agencies (SEAs) to improve the quantity and quality of instruction at both the elementary and secondary school levels in foreign languages that are critical to the economic and security interests of the United States. Congress has appropriated $4.9 million for fiscal year 1991 to implement the program.

Under the statute, each SEA distributes funds on a competitive grant basis to local educational agencies (LEAS) for model programs they have designed that represent alternative and innovative approaches to foreign language instruction. Unless the Secretary grants a waiver, the non-Federal matching requirement is 50 percent. Because the statute requires the SEA's application for the Federal share of program funding to contain a description of the model projects to be conducted, the Secretary has determined that it is necessary at this time to propose certain criteria under which the Foreign Languages Assistance Program will be administered.

The Critical Foreign Languages. Section 2105 of the Act defines the term "foreign language instruction" as "instruction in critical foreign languages as defined by the Secretary." For the Foreign Languages Assistance Program, the Secretary proposes to designate five languages as "critical": Chinese (all dialects), Japanese, Korean, Arabic (all dialects), and Russian. On August 2, 1985, the Secretary issued a notice in the **Federal Register** (50 FR 31412) designating a much more extensive list of 169 foreign languages for programs at the postsecondary level that were supported under the foreign language section of the Secretary's Discretionary Fund authorized by title II of the Education for Economic Security Act (EESA), Public Law 98-377. However, because the Foreign Languages Assistance Program that is the subject of this notice will fund model programs of foreign language instruction only at the elementary and secondary school levels, the Secretary has determined that the list of languages designated for title II of the EESA should not apply to this program.

Consistent with the objectives of the authorizing legislation and the Senate report accompanying the fiscal year 1991 appropriation for this program, the emphasis on Chinese, Japanese, Korean, Arabic, and Russian reflects a concern that the economic and security interests of the United States require that more students at the elementary and secondary school levels study these languages. In addition, because of the statutorily limited purpose, the limited amount of funds available and the statutory requirement that funds be used to support model programs, the Secretary has determined that the primary objectives of the Foreign Languages Assistance Program could best be served by focusing resources on this select group of less commonly taught, but highly critical, foreign languages.

The Secretary does support the study of all foreign languages in the Nation's elementary and secondary schools and believes that the quantity and quality of all foreign language instruction should be strengthened. However, the Secretary notes that other languages, such as French and Spanish, are commonly offered in the nation's schools. The Secretary believes, therefore, that there is no important Federal role in subsidizing the development of models for teaching in these languages.

By contrast, instruction in the proposed five critical languages is not generally available in American elementary and secondary schools. This may be in part due to the lack of availability of proven teaching models. A recent study conducted by the Center for Applied Linguistics revealed that few elementary and secondary schools offer any one of the five proposed critical foreign languages. In this regard, the Council of Chief State School Officers (CCSSO) has recommended that Federal agencies encourage State and local

provision for study in less commonly taught languages. (*International Dimensions of Education*, November 1985, CCSSO).

Beyond the issue of limited availability, expanded and improved instruction in Chinese, Japanese, Korean, Arabic, and Russian is of immediate importance to the Nation. Strengthened instruction in these critical languages at the elementary and secondary school levels may help the country maintain competitiveness in the areas of international trade and national security.

Application Content. Section 2103(b) requires that any State agency desiring to receive a grant shall submit an application to the Secretary containing information and assurances as the Secretary may require. The Secretary believes that all applications should include information that will ensure that projects contribute to the legislation's goal of developing model programs from which other schools in the Nation could benefit. Therefore, the Secretary proposes to require that applications include the following information, in addition to the items enumerated in section 2103(b) of the statute:

(1) A description of how the model program could benefit other school systems in the Nation;

(2) A description of how the programs' design will provide a reliable measure of the impact of the programs or of student educational achievement; and.

(3) An assurance that, upon completion of programs, the State educational agency will provide to the Secretary documentation and a final evaluation of each model program, in a form suitable for dissemination to other schools or school districts that may wish to replicate the project.

Program Duration. Section 2104(b) of the Act provides that an SEA may receive an allotment of funds for two additional years if the Secretary is satisfied that funds made available to the State during the first year were used in a manner required under the State's approved application. At this time, however, the Administration has not proposed funding this program for FY 1991.

Program Variety. The Secretary proposes to take into consideration the amount of program funds that each State receives in determining whether the State's model programs represent a variety of alternative and innovative approaches to foreign language instruction, as required by section 2103(b)(1)(B) of the Act.

Participating Children. Section 2103(b)(2) of the Act requires the SEA's application to contain an assurance that "all children aged 5 through 17 who reside within the school district of the LEA" must be able to participate in any model program funded under the Foreign Languages Assistance Act. The Secretary believes that it would not be feasible to require all LEAs to implement model programs for which all children who reside in the school district of the LEA, regardless of grade level, are eligible to participate. Therefore, the Secretary proposes to require only that, for whatever grade span a model program is designed, all children in those grade levels who reside within the area served by the LEA must be eligible to participate.

Non-Federal Share. Section 2103(b)(3) of the Act requires that the SEA's application contain an assurance "that the State will pay the non-Federal share of the activities for which assistance is sought from non-Federal sources." The Secretary proposes to interpret the requirement in section 2103(b)(3) for "State" payment of the non-Federal share to mean that the source of the non-Federal contribution will be either State or local. In either case, the contribution must come from non-Federal sources. In addition, the requirement of a 50 percent non-Federal share of project costs would include both these costs and third party in-kind contributions that are allowable under § 80.24 of the Education Department General Administrative Regulations (EDGAR).

Waiver of Non-Federal Share. Section 2103(c)(2) of the Act authorizes the Secretary to waive the requirement of a 50 percent State or local share if the Secretary determines that adequate resources are not available. Consistent with the intent of Congress in enacting the waiver provision (see S. Rep. No. 222, 100th Cong., 1st Sess. 76 (1987)) the Secretary would grant a waiver only if presented with a clear case of hardship.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding this notice. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 2040, 400 Maryland Avenue, SW., Washington, DC between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday of each week except Federal holidays.

Program Authority: 20 U.S.C. 3001–3006.

Dated: April 22, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 91–9989 Filed 4–26–91; 8:45 am]

BILLING CODE 4000–01–M

Privacy Act of 1974; System of Records

AGENCY: Department of Education.

ACTION: Notice of an additional routine use for the Guaranteed Loan Program—Loan Control Master File (18–40–0030).

SUMMARY: The Assistant Secretary for Postsecondary Education publishes this notice of a new routine use for the system of records known as the Guaranteed Loan Program—Loan Control Master File (18–40–0030), and to give notice of a change in the location of that system. The new routine use provides that records from this system of records may be disclosed to other Federal agencies, such as the Department of the Treasury (Treasury) to determine whether computer matching programs should be conducted regarding applicants for student loans.

DATES: This change is effective May 29, 1991, unless the Assistant Secretary determines, in response to comments from the public received before that date, to modify this change.

ADDRESSES: Comments should be sent to Tom Pestka, Director, Division of Credit Management and Debt Collection, Office of Student Financial Assistance, Department of Education, room 5114, ROB–3, 7th and D Streets, SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Tom Pestka, Telephone number: (202) 708–4764.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974 (5 U.S.C. 552a(e)(4)) requires the Department to publish in the Federal Register notice of a system of records, and to consider comments from interested members of the public regarding proposed routine uses for the system of records. The regulations adopted by the Department to implement the Privacy Act of 1974 are contained in the Code of Federal Regulations (CFR) at 34 CFR part 5(b). The Department currently maintains a system of records known as the Guaranteed Loan Program—Loan Control Master File (18–40–0030); a notice for this system was published in the Federal Register on April 20, 1982 at 47 FR 16835–6 and amended on June 28, 1982 at 47 FR 27885 and December 9, 1983 at 48 FR 55159.

The routine uses listed in the 1982 notice indicate that the Department uses the information in this system for a variety of purposes related either to enforcement of the loan obligation or to determining whether a borrower's repayment status qualifies that borrower for further student financial

assistance under Title IV of the Higher Education Act of 1965, as amended. This new routine use will permit the Department to disclose information from this system to other Federal agencies and to guaranty agencies to determine whether computer matching programs should be conducted by the Department regarding applicants for loans under the Guaranteed Student Loan Programs or other title IV aid. For example, the Secretary will use this new routine use initially to disclose information from this system to the Internal Revenue Service for the purpose of determining whether student loan defaulters also were delinquent with regard to Federal tax obligations. The Department would use the results of this particular study to determine whether the Department should screen applicants for loans under the Guaranteed Student Loan Programs to determine whether applicants are delinquent with regard to their Federal tax obligations. Because this addition of a routine use will not significantly change or alter the system, we are not preparing a report of altered system of records under 5 U.S.C. 552a(r).

A second amendment is made here to provide the current location of this system of records.

[CFDA number does not apply.]

Dated: April 22, 1991.

Michael J. Farrell,

Acting Assistant Secretary for Postsecondary Education.

The Assistant Secretary for Postsecondary Education amends the notice for the system of records designated the Guaranteed Loan Program—Loan Control Master File (18–40–0030) as follows:

1. The System Location is revised to read as follows:

SYSTEM LOCATION:

National Computer Systems, P.O. Box 30, Iowa City, IA 52244.

2. That portion of the system notice titled "Routine uses of records maintained in the system, including categories of users and the purposes for such uses:" is amended by adding the following after the first sentence:

"To Federal agencies and to guaranty agencies to conduct manual or computerized comparisons needed for research to determine whether the Department should conduct computer matching programs regarding applicants for, or recipients of, loans or other student financial assistance authorized under Title IV of the Higher Education Act, as amended."

[FR Doc. 91-9990 Filed 4-6-91; 8:45 am]

BILLING CODE 4000-10-M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 91-21-NG]

North American Resources Company; Application to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on March 20, 1991, of an application filed by North American Resources Company (NARCo) requesting blanket authorization to import up to 10.95 Bcf of natural gas from Canada over a two-year period commencing with the date of first delivery. NARCo intends to use existing pipeline facilities within Canada and the United States. NARCo states that it will submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., May 29, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Charles E. Backburn, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7751.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, GC–14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0503.

SUPPLEMENTARY INFORMATION: NARCo, a Montana corporation with its principal place of business in Butte, Montana, is engaged in the exploration, production and marketing of natural gas and oil. NARCo proposes to purchase quantities of competitively priced Canadian natural gas from a variety of Canadian suppliers, on a short term or spot market basis, for resale in the United States.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose this application, should comment on the issue of competitiveness as set forth in the policy guidelines regarding the requested import authority. The applicant asserts that imports made under the proposed arrangement will be competitive. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulation in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete

understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of NARCo's application is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on April 23, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89–10067 Filed 4–26–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project Nos. 405–030, et al.]

Hydroelectric Applications, Susquehanna Power Co., et al.; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection.

1. a. *Type of Application:* Amendment to the Conowingo Comprehensive Recreation Master Plan.

b. *Project No:* 405–030.

c. *Date Filed:* February 4, 1991.

d. *Applicant:* The Susquehanna Power Company and Philadelphia Electric Power Company.

e. *Name of Project:* Conowingo Project.

f. *Location:* On the Susquehanna River near Conowingo, Maryland.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Eugene Bradley, The Susquehanna Power Company, P.O. Box 8699, Philadelphia, PA 19101, (215)–841–4000.

i. *FERC Contact:* Brian Romanek, 219–2662.

j. *Comment Date:* June 9, 1991.

k. *Description of Project:* The Susquehanna Power Company and Philadelphia Electric Company, licensees for the Conowingo Project, propose to amend the project's comprehensive master recreation plan. The proposed amendment involves: (1) The re-alignment of the project boundary to add 200 acres of land that will accommodate a primitive campground site in the area of Broad Creek; and (2) the re-alignment of the project boundary to remove 80 acres of project land in the area of Hopkins Cove. The purpose of this boundary re-alignment is to allow the licensee to locate a campground on the Broad Creek site rather than the Hopkins site as was required by the Recreation Plan. A recent study conducted by the licensee showed that the Broad Creek area would be more suitable for a primitive campground site than the Hopkins site.

The removal of the 80 acres of Hopkins Cove from the project boundary means that the Commission would no longer have jurisdiction over the use of this land. The addition of 200 acres to the project at Broad Creek means that the Commission would gain jurisdiction over the use of this land.

1. This notice also consists of the following standard paragraphs: B, C, and D2.

2. a. *Type of Application:* Transfer of license.

b. *Project No.:* 719–006.

c. *Date filed:* March 29, 1991.

d. *Applicant:* Two Rivers, Inc., (Transferor) and Trinity Conservancy, Inc. (Transferee).

e. *Name of Project:* Trinity Project.

f. *Location:* On Phelps and James Creeks, in Chelan County, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Donald E. Booth, Two Rivers Inc., 22750 Highway 207, Leavenworth, WA 98826, (509) 763–3280.

i. *FERC Contact:* Michael Spencer at (202) 219–2846.

j. *Comment Date:* June 3, 1991.

k. *Description of Proposed Action:* On July 18, 1979, a license was issued to Jesse I. Smith for the construction, operation, and maintenance of the Trinity Project. The license was transferred to Two Rivers, Inc., on August 8, 1980. It is proposed to transfer the license to Trinity Conservancy, Inc. The proposed transfer will not result in any changes to the development. The Transferor certifies that it has fully complied with the terms and conditions of the license. The Transferee accepts all the terms and conditions of the license and agrees to be bound thereby to the same extent as though it were the original licensee.

1. This notice also consists of the following standard paragraphs: B and C.

3a. *Type of Application:* Amendment of License.

b. *Project No:* 2019–011.

c. *Date Filed:* February 27, 1991.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Utica Project.

f. *Location:* The project is located on the North Fork Stanislaus River in Alpine, Calaveras, and Tuolumne Counties, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Rodney J. Strub, Manager, Hydro Generation, Pacific Gas and Electric Company, 77 Beale Street, San Francisco, CA 94106, (415) 973–5310.

i. *FERC Contact:* Kenneth Fearon, (202) 219–2657.

j. *Comment Date:* May 30, 1991.

k. *Description of Amendment:* The amendment proposes to remove Lake Alpine, Union Reservoir and Utica Reservoir from the Project license. As a result of the installation of the North Fork Stanislaus Project, FERC No. 2409, the licensee states that the reservoirs are no longer directly connected to the project's only generating facility, Murphys Powerhouse. Project No. 2409's new North Fork Diversion allows water released from Lake Alpine, Union and Utical Reservoirs to be directed for storage at New Spicers Meadow Reservoir. McKays Point Reservoir, which is located on the North Fork Stanislaus River and is also a part of Project No. 2409, inundated PG&E's Utica Diversion and portions of the Upper Utica Conduit. Water is now delivered to the remainder of the Upper Utica Conduit, just above Hunters Reservoir, by a tap on P–2409's Collierville Tunnel. An Impact agreement between the licensee's of Projects 2019 and 2409 defines the schedule and amount of water to be delivered by the tunnel tap to the Upper Utica Conduit. Therefore, the Utica Project is no longer regulated by, or directly connected to Lake Alpine and Union and Utica Reservoirs. PG&E plans

to continue to operate and maintain the reservoirs as it has done historically.

1. This notice also consists of the following standard paragraphs: B, C, and D2.

4a. *Type of Application:* Surrender of License (1.5 MW or Less).

b. *Project No:* 3795–010.

c. *Date Filed:* March 21, 1991.

d. *Applicant:* Thermalito Irrigation District and Table Mountain Irrigation District.

e. *Name of Project:* Concow.

f. *Location:* On Concow Creek in Butte County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. James O. Schmidt, Manager, Thermalito Irrigation District, 410 Grand Avenue, Oroville, CA 95965.

i. *FERC Contact:* Mr. Surender M. Yepuri, (202) 219–2847.

j. *Comment Date:* June 6, 1991.

k. *Description of Proposed Action:* The Licensee requests surrender of its license, without prejudice to its right to reapply, stating that it is imprudent and impossible to comply with the requirements of the license due to the pending litigation between the licensee and Pacific Gas and Electric Company. The project would have consisted of the licensee's existing Concow dam and reservior, a penstock, a powerhouse with a rated capacity of 990 kW, a transmission line, and other appurtenance.

The licensee states that no construction has commenced on the project.

1. This notice also consists of the following standard paragraphs: B, C, and D2.

a. *Type of Application:* Transfer of License.

b. *Project No.:* 8657–007.

c. *Date Filed:* February 14, 1991.

d. *Applicant:* Greenwood Ironworks and Harvell Hydro Associates.

e. *Name of Project:* Harvell Dam.

f. *Location:* On the Appomattox River in Dinwiddie and Chesterfield Counties, Virginia.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Wayne L. Rogers, 191 Main Street, Annapolis, MD 21401, (301) 268–8820.

i. *FERC Contact:* Charles T. Raabe (tag) (202) 219–2811.

j. *Comment Date:* May 16, 1991.

k. *Description of Transfer:* The Greenwood Ironworks and Harvell Hydro Associates (co-licensees) propose to transfer the Harvell Hydro Associates interests to Greenwood Ironworks.

The license was issued December 1, 1987, and would expire November 30, 2027.

1. This notice also consists of the following standard paragraphs: B, C, and D2.

a. *Type of Filing:* Surrender of License.

b. *Project No.:* 8662–015.

c. *Date Filed:* March 29, 1991.

d. *Applicant:* Nockamixon Hydro Associates.

e. *Name of Project:* Nockamixon.

f. *Location:* On Tohickon Creek in Bucks County, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. David M. Coombe, suite 409, 410 Severn Avenue, Annapolis, MD 21403.

i. *FERC Contact:* Ms. Julie Bernt, (202) 219–2814.

j. *Comment Date:* May 29, 1991.

k. *Description of Application:* The proposed project would have consisted of: (1) An existing 112-foot-high earth and rockfilled dam owned by the Commonwealth of Pennsylvania; (2) an existing reservoir with a normal water surface area of 1,450 acres, a storage capacity of 40,000 acre-feet at normal water surface elevation of 395 feet m.s.l.; (3) an existing concrete intake tower; (4) two existing 344-foot-long horseshoe shaped concrete conduits; (5) an existing 72-inch-diameter, 344-foot-long steel penstock; (6) a powerhouse containing three generating units with a total rated capacity of 1,480 kW; (7) an existing 800-foot-long tailrace; and (8) a 350-foot-long transmission line.

The applicant states that it is unable to find a power purchaser who is willing to execute a power purchase agreement before the April 5, 1991, construction commencement deadline. No project construction activities have been initiated at the proposed site.

1. This notice also consists of the following standard paragraphs: B and C.

a. *Type of Filing:* Transfer of License.

b. *Project No.:* 8914–009.

c. *Date Filed:* March 25, 1991.

d. *Applicant:* Colorado River Water Conservation District, Water Users Association No. 1, and the Rio Blanco Water Conservancy District.

e. *Name of Project:* Taylor Draw.

f. *Location:* On the White River in Rio Blanco County, Colorado.

g. *Filed Pursuant to:* Federal Power Act, section 30, 16 U.S.C. Section 791(a)–825(r).

h. *Applicant Contact:*

Roland C. Fischer, Colorado River Water Conservation District, P.O. Box 1120, Glenwood Springs, CO 81601, (303) 945–8522.

Michael N. McCarty, Attorney, Ritts, Brickfield & Kaufman, Watergate 600 Building, suite 915, Washington, DC 20037, (202) 342–0800.

Norman Klements, Rio Blanco Water Conservancy District, 2252 East Main Street, Rangely, CO 81648, (303) 675–5055.

i. *FERC Contact:* Hector M. Perez, (202) 219–2843.

j. *Comment Date:* June 3, 1991.

k. *Description of the proposed action:* The applicants propose to transfer the license from the Colorado River Water Conservation District and the Water Users Association #1 (Transferor) to the Rio Blanco Water Conservancy District (Transferee) to localize the ownership and control of the project.

The transfer would not result in any changes to the proposed development, which construction is scheduled to commence by July 1991. The Transferor certifies that it has fully complied with the terms and conditions of the license. The Transferee accepts all the terms and conditions of the license and agrees to be bound thereby to the same conditions of the license to the same extent as though it were the original licensee.

1. This notice also consists of the following standard paragraphs: B and C.

a. *Type of Filing:* Conduit Exemption.

b. *Project No.:* 11094–000.

c. *Date Filed:* February 25, 1991.

d. *Applicant:* Calleguas Municipal Water District.

e. *Name of Project:* Springville.

f. *Location:* At the Calleguas Municipal Water District's water distribution system, in Ventura County, California.

g. *Filed Pursuant to:* Federal Power Act, section 30, 16 U.S.C. Section 791(a)–825(r).

h. *Applicant Contact:* James A. Hubert, General Manager, Calleguas Municipal Water District, 2100 Olsen Road, Thousand Oaks, CA 91362, (213) 245–5785.

i. *FERC Contact:* Hector M. Perez, (202) 219–2843.

j. *Comment Date:* May 23, 1991.

k. *Description of Project:* The proposed project would consist of a powerhouse with a 1,000-kilowatt-generating unit at the inflows of the Springville Reservoir. The Springville Reservoir is a buried concrete reservoir also part of the water distribution system. The project would have an average annual generation of 3,658,200 kilowatthour.

l. *Purpose of the project:* Project energy would be sold to Southern California Edison Company.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

9 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11098–000.

c. *Date filed:* March 4, 1991.

d. *Applicant:* Ida-West Energy Company.

e. *Name of Project:* Hollister.

f. *Location:* On Salmon Falls Creek, on lands administered by the Bureau of Land Management, in Twin Falls County, Idaho. Township 13 S Range 15 E.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Application Contact:* Mr. Kip Runyan, Ida-West Energy Company, 333 North 13th Street, Boise ID 83702, (208) 336–4254.

i. *FERC Contact:* Michael Spencer at (202) 219–2846.

j. *Comment Date:* June 5, 1991.

k. *Description of Project:* The proposed project utilize the Salmon River Canal Company's Salmon Falls Creek reservoir, dam and main canal and would consist of: (1) A gated diversion structure on the main canal; (2) 6-foot-diameter, 9,000-foot-long penstock; (3) a powerhouse containing generating units with a combined capacity of 4,900 kW and an estimated annual generation of 11.4 GWh; (4) a 1-mile-long transmission line; and (5) a 9,000-foot-long access road to the powerhouse.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $46,000.

l. *Purpose of Project:* Project power will be sold to Idaho Power Company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

10 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11107–000.

c. *Date filed:* March 14, 1991.

d. *Applicant:* The City of Oswego, New York.

e. *Name of Project:* Norfolk.

f. *Location:* On the Raquette River, in the Town of Norfolk, Norfolk Township, St. Lawrence County, New York.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Application Contact:* Paul V. Nolan, 6219 North 19th Street, Arlington, VA 22205, (703) 534–4409.

i. *FERC Contact:* Charles T. Raabe (202) 219–2811.

j. *Comment Date:* May 22, 1991.

k. *Completing Application:* Project No. 10639–000, *date filed:* August 10, 1988, *due date:* February 28, 1991.

l. *Description of Project:* Applicant proposes to study the feasibility of developing the available head using the river flow amounts excess to the flow utilized by the existing, operating Norfolk Development of the licensed Raquette River Project No. 2330.

It is contemplated that the project will be evaluated for utilization of flows from 1,770 cfs to 2,650 cfs at a hydraulic head of approximately 43 feet. The estimated average annual energy production of such a facility would be from 15 GWH to 25 GWH. The proposed project would include a new powerhouse containing a new generating unit having a rated generator capacity of 3,700 kW, a new intake structure with trashracks and a new 13-foot-diameter, 103-foot-long penstock, or a new 13-foot-diameter bifurcated penstock connected to an existing penstock. Applicant estimates that the cost of studies to be performed under the terms of the permit would be $125,000. The existing dam and existing facilities are licensed to and owned by Niagara Mohawk Power Corporation.

m. This notice also consists of the following standard paragraphs: A8, A10, B, C & D2.

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11108–000.

c. *Date filed:* March 14, 1991.

d. *Applicant:* The City of Oswego, New York.

e. *Name of Project:* Sugar Island Hydro Project.

f. *Location:* On the Raquette River, in the Town of Potsdam, St. Lawrence County, New York.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Paul V. Nolan, 6219 North 19th Street, Arlington, VA 22205, (703) 534–5509.

i. *FERC Contact:* Ed Lee (202) 219–2809.

j. *Comment Date:* May 29, 1991.

k. *Competing Application:* Project No. 10636–000, *date filed:* August 10, 1988, *due date:* February 28, 1991.

l. *Description of Project:* Applicant proposes to study the feasibility of developing the available head using the river flow amounts excess to the flow utilized by the existing, operating Sugar Island Development of the licensed Middle Raquette River Project No. 2320.

It is contemplated that the project will be evaluated for utilization of flows in the range of 1,190 to 2,650 cfs and have a combined rated capacity of about 6,900 kW at a hydraulic head of approximately 63 feet. The estimated average annual energy production of such a facility would be approximately 20 to 30 GWh. The proposed project would include a new powerhouse containing a new generating unit having a rated generator capacity of 6,900 kW, a new intake structure with trashracks and a new 14-foot-diameter penstock. Applicant estimates that the cost of studies to be performed under the terms of the permit would be $125,000. The existing dam and existing facilities are licensed to and owned by Niagara Mohawk Power Corporation.

m. This notice also consists of the following standard paragraphs: A8, A10, B, C & D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, room 1027 (810 1st), at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. Agency Comments—The Commission requests that the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agenc(ies), for the purposes set forth in Section 408 of the Energy Security Act of 1980, file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, state and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: April 23, 1991, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 91-9996 Filed 4-26-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-4-18-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

April 22, 1991.

Take notice that on April 17, 1991, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff with a proposed effective date of May 1, 1991:

Original Volume No. 1:

Thirty-eighth Revised Sheet No. 10
Thirty-eighth Revised Sheet No. 10A
Nineteenth Revised Sheet No. 11
Ninth Revised Sheet No. 11A
Ninth Revised Sheet No. 11B

First Revised Volume No. 2-A

Sixth Revised Sheet No. 14

Texas Gas states that the proposed tariff sheets are being filed as part of Texas Gas's second Annual Reconciliation of take-or-pay settlement payments contained in original Docket Nos. RP89-119, RP89-208 and RP90-58. Texas Gas notes that the filing makes the appropriate adjustments and restates the Commodity TOP Surcharge to be collected during the third Annual Recovery Period beginning May 1, 1991, and ending April 30, 1992.

Texas Gas further states that it has served copies of this filing upon the company's sales and transportation customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 29, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-9995 Filed 4-26-91; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

Ecological Processes and Effects Committee; Ecorisk Assessment Subcommittee; Open Meeting

Under Public Law 92–463, notice is hereby given that a meeting of the Ecorisk Assessment Subcommittee of the Ecological Processes and Effects Committee (EPEC) of the Science Advisory Board (SAB) will be held on May 20–22, 1991. This meeting will be held at the Conference Facility in Calloway Gardens, U.S. Highway 27, Pine Mountain, Georgia 31822–2000.

The meeting will start at 9 a.m. on May 20 and will adjourn no later than 5 p.m. on May 22, and is open to the public. The main purpose of this meeting is to review a five year plan for Ecological Risk Assessment Research that supports the EPA's Offices of Pesticide Programs and Toxic Substances. The research includes plans for field testing and predictive toxicology. EPA is expected to discuss both states of the practice and the science for ecological risk assessment. Copies of background documents are available from Dr. Lee Mulkey at the Athens Laboratory (Phone: (404) 546–3128).

For additional information concerning this meeting or to obtain an agenda, please contact Dr. Edward Bender, Designated Federal Official, Ecological Processes and Effects Committee (EPEC), Science Advisory Board (A–101–F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (Phone: (202) 382–2552; Fax: (202) 475–9693). Anyone wishing to make a presentation at the meeting should forward a written statement to Dr. Bender no later than May 6, 1991. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. Seating at the meeting will be on a first come basis.

Dated: April 17, 1991.

Donald Barnes,

Director, Science Advisory Board.

[FR Doc. 91–10050 Filed 4–26–91; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL RESERVE SYSTEM

H. Alan Bell Trust II; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than May 20, 1991.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. H. Alan Bell Trust II, Manhattan, Kansas; to acquire an additional 18.9 percent of the voting shares of Bellcorp, Inc., Manhattan, Kansas, for a total of 42.7 percent, and thereby indirectly acquire Citizens Bank and Trust Company, Manhattan, Kansas.

Board of Governors of the Federal Reserve System, April 23, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-10026 Filed 4-26-91; 8:45 am]

BILLING CODE 6210-01-F

Second Mid-America Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 20, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Second Mid-America Bancorp, Inc., Davenport, Iowa; to become a bank holding company by acquiring 86.2 percent of the voting shares of FINB Holding Company, Savanna, Illinois, and thereby indirectly acquire First Illinois National Bank, Savanna, Illinois.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Sun Financial Corporation, Earth City, Missouri; to acquire 90.34 percent of the voting shares of Summit Bank, Holts Summit, Missouri.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Big Sandy Holding Company, Limon, Colorado; to become a bank holding company by acquiring at least 90 percent of the voting shares of The First National Bank of Limon, Limon, Colorado.

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Hillebrand Paradise Ranch Resort, Inc., Grants Pass, Oregon; to become a bank holding company by acquiring 25 percent of the voting shares of Colonial Banking Company, Grants Pass, Oregon.

2. Topdanmark A/S, Ballerup, Denmark; to become a bank holding company by retaining 100 percent of the voting shares of Aktivbanken A/S, Vejle, Denmark, and thereby indirectly acquire National Bank of Long Beach, Long Beach, California.

Board of Governors of the Federal Reserve System, April 23, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-10027 Filed 4-26-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement No. AOA-91-2]

Fiscal Year 1991 Program Announcement; Availability of Funds and Request for Applications

AGENCY: Administration on Aging, DHHS.

ACTION: Announcement of availability of funds and request for applications to be submitted to the Administration on Aging for the establishment and operation of National Eldercare Institutes to assist and cooperate in a National Eldercare Campaign for older persons at risk.

SUMMARY: The Administration on Aging (AoA) announces that it will make assistance awards available, through cooperative agreements, for the establishment and operation of National Eldercare Institutes, to work in cooperation with a National Eldercare Campaign on behalf of older Americans at risk of losing their self-sufficiency. Funding for awards under this special announcement is authorized by title II and title IV of the Older Americans Act, Public Law 89–73, as amended. A subsequent Program Announcement will be made by AoA for the support of research, demonstration, training, and development projects through its Discretionary Funds Program for Fiscal Year 1991.

This program announcement consists of three parts. Part I provides background information on the National Eldercare Campaign and documents the statutory funding authority for the support by AoA of National Eldercare Institutes. Part II describes the nature, scope, and objectives of the National Eldercare Institutes for which AoA is inviting applications to be considered for funding. Part III describes in detail the application process and provides guidance on how to prepare and submit an application.

All of the forms necessary to submit an application are published as part of this announcement following part III. No separate application kit is necessary for submitting an application. If you have a copy of this announcement, you have all the information and forms required to prepare and submit an application.

Assistance awards, in the form of cooperative agreements, will be made under announcement subject to the availability of funds for the support of these activities.

DATE: The closing date for receipt of applications under this announcement is June 28, 1991.

ADDRESS: Application receipt point: Department of Health and Human Services, Office of Human Development Services, Grants and Contracts Management Division, Acquisition and Assistance Management Branch, 200 Independence Avenue, SW., room 341–F, Washington, DC 20201, Attn: AoA–91–2.

FOR FURTHER INFORMATION CONTACT: Department of Health and Human Services, Administration on Aging, Office of Program Development, 330 Independence Avenue, SW., room 4661, Washington, DC 20201, telephone (202) 619–0441.

SUPPLEMENTARY INFORMATION:

Part I Background

A. The National Eldercare Campaign

Demographic trends highlight the growing numbers and importance of our older population, both now and in the future. By the year 2030, one of every four Americans, over 83 million persons, will be 60 years or older and approximately 8 million of them will be age 85 or older. What has been called the graying of America has captured considerable media attention and given rise to widespread concern over future economic, political, and societal trends, especially when the baby-boom generation reaches age 60+ in the early decades of the 21st century.

It is vitally important that we, as a nation, focus on the need to build our capacity to respond to the dramatic increase in our older population today and into the next century. That challenge is heightened by the growing numbers of elderly who are at risk, including those who are physically or mentally impaired; abused, neglected, or exploited; or without a caregiver to assist them when in need. At special risk are those older people who are poor; particularly women, rural Americans, and members of minority groups. For these and other older Americans, the crucial consideration is to function independently at home and in the community as long as possible. Their greatest fear is that, if and when they begin to lose that independence, there will be no one and no place to turn to for help.

The term "eldercare" is gaining broad acceptance as defining the caregiving role our society must play on behalf of older persons. Within that context, the National Eldercare Campaign focuses on care provided older persons at risk through home and community-based services. While most care is provided by family members, friends and neighbors, eldercare can also be made available through formal social and health support systems, religious organizations, fraternal groups, national organizations and corporate benefit programs established to assist employees in carrying out their caregiver roles for at-risk family members.

The Administration on Aging recognizes that much has and is being accomplished through both the informal and formal support systems to care for older persons at risk. Federal, State, and local governments, as well as the private and voluntary sectors, have made progress to expand eldercare services. However, many prominent organizations and individuals have not yet played a role in this effort. More can be done not only to bring non-traditional resources and approaches to bear on the problem, but also to reinforce our family and community-based systems of care.

The Administration on Aging has recently announced the start of a National Eldercare Campaign—a nationwide, multi-year effort to mobilize resources for home and community-based care for older persons at risk of losing their self-sufficiency. The cornerstone of the campaign is a national public awareness strategy. It will be directed toward making all segments of society aware of the implications of an aging society and of the role public, private, and voluntary organizations can play in ensuring the availability and accessibility of home and community-based services for older persons at risk, now and in the future.

The commitment to helping at-risk older persons encompasses both informal and formal support systems, organizations and leaders in the aging constituency as well as organizations with a new-found consciousness of eldercare issues. The eldercare campaign will be aimed at expanding the involvement of a wide variety of agencies and organizations representing government, business, labor, the voluntary, religious, and civic communities. The Administration on Aging will encourage these organizations to: (1) Develop relevant eldercare activities at the national level related to their organization's concerns; and (2) encourage their State and local affiliates to participate in State and local eldercare coalitions aimed at building systems of quality eldercare services in every community.

Because the National Eldercare Campaign is focused on how older persons at risk are served in their homes and in their communities, action at the State and local levels is critical to the success of the Campaign. State and

community eldercare coalitions, in which State and Area Agencies on Aging have a catalytic leadership role, will be called on to demonstrate that the public, private, and voluntary sectors, can be mobilized around an eldercare agenda and cooperate effectively in providing home and community-based services for older persons at risk.

The Administration on Aging is in the process of awarding a number of grants and contracts in conjunction with the National Eldercare Campaign. In accordance with DHHS policy governing the use of contracts and grants, activities which provide direct benefits to the Administration on Aging will be supported through the contract mechanism. Other activities which promote more generally the goals of the National Eldercare Campaign will be supported by grants and cooperative agreements.

B. National Eldercare Institutes

The establishment and operation of special National Eldercare Institutes represents a major commitment by the Administration on Aging to achieve the goals of the National Eldercare Campaign. The Eldercare Institutes should be seen as a valuable component of the National Eldercare Campaign. The Administration on Aging will consider an application for funding only if the applicant provides convincing evidence that it will contribute substantially to achieving the goal of the National Eldercare Campaign.

The Institutes are designed to focus on critical substantive areas closely related to the delivery of eldercare services in the home and in the community. Their roles will be to serve as a knowledge base and program resource, to promote the effective transfer, dissemination, and utilization of relevant information, and to provide needed training and technical assistance. The National Eldercare Institutes, and their functions and activities, are the subject of this AoA program announcement.

In initiating the National Eldercare Campaign, the Administration on Aging is carrying out its leadership and advocacy responsibilities under the Older Americans Act to serve all older persons, with a special focus on those older persons in the greatest economic or social need. Underlying these issues and concerns is the recognition by AoA and the nationwide aging network that we must develop and use our resources to (1) serve the current generation of older Americans more effectively and (2) achieve a long range capacity to respond to the dramatic increases in the older population projected for the coming decades.

In seeking to accomplish these tasks and as part of the Eldercare Campaign, AoA has substantial functional and program authority under titles II and IV of the Older Americans Act to enlist the expertise, and capabilities assistance of special National Eldercare Institutes. The subject area of each Institute is based on its relevance to priority eldercare issues and to the objectives of the National Eldercare Campaign.

C. Coordination With Other Federal Agencies

Under the Older Americans Act, the Administration on Aging functions as a focal point within the Federal government for aging-related concerns. In that capacity, AoA advises the Secretary of Health and Human Services in matters affecting older Americans and provides consultation and information to other Federal agencies on the characteristics, circumstances, and needs of older persons. AoA's national level program and advocacy responsibilities place major emphasis on the development of collaborative relationships with other Federal agencies aimed at coordinating diverse and wide-ranging Federal program resources and linking those resources to the similarly diverse needs of older persons.

Dating back two decades, AoA has worked hard to develop and implement a network of Interagency Agreements with such relevant Federal departments and agencies as the Departments of Transportation, Housing and Urban Development, and Labor, the Social Security Administration, the Health Care Administration, ACTION, and the National Institute on Aging.

Recent examples of AoA initiatives to improve coordination with other Federal efforts include: A Housing initiative with a Memorandum of Understanding (MOU) with the Farmers Home Administration (FmHA) of the Department of Agriculture, the focus of the MOU being to promote the well-being of older persons by providing a coordinated, integrated response to the housing and supportive service needs of older persons, particularly those programs serving the rual and low-income elderly; and an Employment initiative with the Employment and Training Administration (ETA) to facilitate cooperation between the two agencies and to assist States and local communities in improving linkages between human service programs, and to achieve an integrated response to increasing employment and training opportunities for older persons.

During 1990 a joint effort occurred with AoA/ACTION sponsoring a jointly funded, three-year program effort to demonstrate innovative approaches to gain private sector support to expand the number of Senior Companions providing in-home services to homebound vulnerable older persons, and a multi-purpose Transportation initiative, which was designed to improve the coordination of transportation services funded under the Urban Mass Transportation Act of 1964, as amended, and the Older Americans Act which relate to older persons.

AoA has recently established a Federal Interdepartmental Task Force to better identify issues for policy and program coordination and to develop collaborative interdepartmental approaches in preparation for the changing and growing elderly population. The Task Force is comprised of representatives from the Department of Education, Department of Veterans Affairs, Department of Labor, Department of Housing and Urban Development, Department of Transportation, Department of Agriculture, Social Security Administration, Health Care Financing Administration, National Institute of Aging, Family Support Administration, Health Resources and Services Administration, and the Food and Drug Administration. The Task Force established four work groups to address the following areas: Housing, Employment/Volunteers, Health, and In-home and Community-Based Care Services. The work groups have convened meetings to identify and select issues of major concern in the designated subject area, prioritize issues, develop action plans and report recommendations to the Task Force.

The interagency collaborations represent, along with the National Eldercare Campaign, a strategic coupling of AoA's resources to serve the nation's elderly, especially those at risk of losing their independence.

AoA's Federal Interagency Agreements cover a spectrum of program efforts—in housing, transportation, health promotion, elder abuse, etc.—that closely parallel the subject areas of the propsed National Eldercare Institues. In both subject matter and functional terms, the Institutes will serve to complement and augment the gains achieved through interagency cooperations.

The Institutes will also serve as a technical resource in enhancing AoA's ability to play a coordination role in such complex emerging areas as, for example, Federal implementation of the Americans with Disabilities Act (ADA), which will have wide ramifications for

housing, transportation, employment, rehabilitative, and other services for the disabled elderly. ADA is expected to be a focus of attention and policy consideration during the next several years and the Institutes could serve as a major resource to AoA in this area.

D. Statutory Authority

The statutory authority under which cooperative agreements will be awarded to support the establishment and operation of National Eldercare Institutes is:

- Title II and title IV of the Older Americans Act, as amended (42 U.S.C. 3001 et seq.).

E. Public Comments on this Announcement

AoA invites comments on this National Eldercare Institute Announcement. Please direct your comments to: Office of Program Development, Administration on Aging, 330 Independence Avenue, SW., Washington, DC 20201.

Part II—National Eldercare Institutes

This part describes: (a) Who is eligible to apply under this program announcement; (b) the Federal share of budget costs and the duration of AoA support for the Institutes; (c) the core functions and activities to be undertaken by each of the institutes; (d) the role of AoA in coordinating and managing the work of the National Eldercare Institutes and; (5) each specific subject or issue area under which AoA expects to support a National Eldercare Institute. A listing of the Institutes, in their order of presentation in this announcement, is provided for the convenience of prospective applicants.

A. Eligible Applicants

In general, any public or nonprofit agency, organization, or institution is eligible to apply under this program announcement. However, in order to merit consideration for a National Eldercare Institute award, an applicant must demonstrate that it has: (1) Extensive knowledge and experience in the relevant subject and program area(s); (2) a track record of substantive achievement in the relevant subject/program area which is nationwide in scope, and; (3) the requisite organizational capability to carry out the activities of an Eldercare Institute on a nationwide scale.

Any nonprofit organization applying under this program announcement that is not a current DHHS grantee should include with its application Internal Revenue Service or other legally recongnized documentation of its nonprofit status. A nonprofit applicant cannot be funded without acceptable proof of its status.

Applications from individuals cannot be considered because they are ineligible to receive a grant award under the provisions of title IV of the Older Americans Act. For profit organizations are not eligible applicants, but they may participate as subgrantees or subcontractors to eligible public or nonprofit agencies.

B. Project Costs and Duration

The Federal share of project costs for each Institute is expected to approximate $250,000 for the first year. AoA will assess the performance of the Institute to determine whether further support is warranted. Depending upon the performance of the Institute and/or the availability of funds, the approximate Federal share of project costs may be increased to $300,000 a year for the second and third years. The project period for each Institute is limited to three (3) years. Applicants must indicate that they recognize these limitations and will seek other sources of funding to support the Institute during, as well as beyond, the project period.

C. Core Institute Activities

Each National Eldercare Institute must carry out the following functions and activities of general support for the nationwide Eldercare Campaign, with appropriate emphasis on assisting the work of national, State, and community eldercare coalitions:

1. Knowledge Synthesis and Analysis

The nation's ability to respond effectively, now and in the future, to issues of concern to our older population, particularly the at-risk elderly, will depend significantly on the depth and clarity of public understanding and discussion of those issues. The Eldercare Institute is responsible for (a) synthesizing the state of knowledge in its priority topical area and serving as a knowledge base to participants in the National Eldercare Campaign and others who work on behalf of the aging; (b) advancing our critical understanding of the key eldercare issues relevant to the Institute's subject area; and (c) stimulating debate on a future eldercare agenda based on accurate analysis and models of the changing needs, circumstances, and resources of the older population.

2. Knowledge Transfer and Information Dissemination

The Institute has a major role in transferring knowledge and educating appropriate audiences regarding the implications of eldercare issues in an emerging aging society. In this capacity, the Institute will be: (a) Providing resources key to heightening the national awareness of older persons at risk and to stimulating the growing involvement in the National Eldercare Campaign of aging and non-aging organizations, and; (b) providing timely and practical information for the use of national, State and community eldercare coalitions. Knowledge transfer and information dissemination vehicles to reach the right educational and dissemination vehicles to reach the right audience(s) and on sharing practical, useful information, across the continuum of care for older persons, with aging network agencies, service providers, professionals, and the public.

3. Training and Technical Assistance

Training and technical assistance should be targeted selectively to the agencies and organizations comprising the national, State, and community eldercare coalitions, particularly those organizations with an emerging interest in aging and eldercare issues. The aim should be to equip aging network agencies and other participants in the eldercare campaign with the latest information and approaches to providing care and services for older persons. At the same time, through its interaction with the many eldercare coalitions, the Institute can be expected to gain a fuller understanding of how aging agencies and practitioners perceive the practical issues being faced by older persons and their families.

D. Roles of AoA and the Institutes

The Administration on Aging will have an overall responsibility for coordinating the efforts of the National Eldercare Institutes as well as a particularized responsibility for sharing in the management of each Institute. In its coordinating role, AoA will apprise the Institutes of the status of the National Eldercare Campaign and of Federal executive agency program developments relevant to their areas of interest. AoA will also, with the support of a contractor, coordinate certain logistical and scheduling activities of the Institutes to minimize overlap of effort.

Under the cooperative agreement mechanism, AoA and each Institute will share the responsibility for managing that Institute. The Institute will have the primary responsibility for developing

and implementing the activies of the Institute. AoA will jointly participate with the Institute in such activities as clarifying the specific issues to be addressed by the Institute, through periodic briefings and ongoing consultation—sharing with the Institute its knowledge of the issues being addressed by the Institute as well as information about eldercare activities being undertaken by others, providing feedback to the Institute about the usefulness to the field of its written products and information sharing activities, and participating as much as possible in the deliberations of the Institute's advisory committee. The details of this relationship will be set forth in the cooperative agreement to be developed and signed prior to issuance of the award.

E. Listing of the National Eldercare Institutes

(1) National Eldercare Institute on Long Term Care
(2) National Eldercare Institute on Elder Abuse and State Ombudsman Services
(3) National Eldercare Institute on Older Women
(4) National Eldercare Institute on Multipurpose Senior Centers and Community Focal Points
(5) National Eldercare Institute on Transportation
(6) National Eldercare Institute on Housing and Supportive Services
(7) National Eldercare Institute on Nutrition Services
(8) National Eldercare Institute on Human Resources Development
(9) National Eldercare Institute on Health Promotion
(10) National Eldercare Institute on Income Security
(11) National Eldercare Institute on Employment and Volunteerism
(12) National Eldercare Institute on Business and Aging
(13) National Eldercare Institute on Coalition Building

National Eldercare Institute Subject Areas Descriptions

1. National Eldercare Institute on Long Term Care

With the "aging" of American society, there is a concomitant increase in many chronic, disabling conditions such as heart disease, stroke, arthritis, Alzheimer's Disease and other dementias. Because of physical and mental impairments, millions of older persons are at risk of losing their independence. For these elderly, the need for long term care, especially home and community-based services, continues to grow. These developments and the challenges they raise lend impetus to the establishment of a National Eldercare Institute on Long Term Care.

At the national level, there has been considerable debate on and proposals for long term care reform. There is increasing emphasis on improving coordination of current Federal, State, and local programs. At the State and local levels, efforts have focused on developing more responsive and cost-effective systems of care, with a complementary emphasis on community based approaches. State and Area Agencies on Aging have been in the forefront in improving the access of older persons to a broad array of home and community services.

The proposed National Eldercare Institute on Long Term Care would advance these efforts through a combination of activities: Issue analyses; knowledge transfer and dissemination; training and technical assistance. Institute applicants must demonstate a strong knowledge base and a track record of substantive nationwide achievement in the areas of long term care and eldercare, as well as extensive nationwide experience in working with national, State, and local organizations active in this program area. They should address a full range of issues regarding home and community-based systems of care for at-risk elderly, including the victims of Alzheimer's Disease and their families. Such issues include, but are not limited to:

- Access to home and community-based services;
- Functional assessment and care planning;
- Managing and coordinating multiple programs and funding streams;
- Quality of home and community-based care;
- Linkages between community service agencies and hospitals and residential long term care facilities;
- Public and private collaboration in relation to the delivery of long term care;
- Approaches to financing community based eldercare services; and
- Assuring consumer decision-making and protection.

Applicants also should demonstate cost-effective approaches to implementing the functions of the Institute. Particular attention should be paid to:

- Translating research findings, into useful and pragmatic guides for action by national, State, and community eldercare coalitions in promoting in-home and community services for at-risk elderly;
- Analyzing those factors and key issues that impact on long term care at national, State, and local levels;
- Incorporating best practice information into training and technical assistance materials for use in conjunction with the work of national, State, and community eldercare coalitions;
- Disseminating source materials and pertinent information on long term care program developments to national, State, and community eldercare coalitions and other appropriate audiences; and
- Convening or participating in symposia, seminars, and conferences to transfer knowledge and exchange practical information on home and community-based eldercare services for older persons at risk; such meetings should facilitate the exchange of timely and useful information between the Aging Network and other organizations not traditionally identified as providers of eldercare.

2. National Eldercare Institute on Elder Abuse and State Ombudsman Services

Several recent developments have called attention to the problem of elder abuse, both at home and in institutional settings, and highlighted the need to take action on behalf of those elderly at risk of being exploited, neglected, or abused. These activities include Congressional hearings and reports and activities undertaken by the Department of Health and Human Services. Secretary Sullivan has established a DHHS Elder Abuse Task Force to develop a comprehensive elder abuse strategy that combines public and private resources at national, State, and local levels. As part of that strategy, the Administration on Aging will be expanding its commitment to address elder abuse, neglect, and financial exploitation in both domestic and institutional settings. The establishment of a National Eldercare Institute on Elder Abuse and State Ombudsman Services is an important part of that AoA effort. Accordingly, the proposed Institute will be expected to coordinate its work with the elder abuse strategy developed by the DHHS Task Force.

There is evidence from several quarters of a substantial increase in the number of older persons who are abused, exploited, and neglected, and who constitute a sizeable segment of the older population at risk of losing their self-sufficiency. The Subcommittee on Health and Long Term Care of the U.S. House of Representatives Select Committee on Aging estimated that, in 1989, approximately 1.5 million

Americans were victims of elder abuse in their own homes—an increase of 50% since 1980. The National Aging Resource Center on Elder Abuse estimated in a recent report (entitled "Summaries of National Elder Abuse Data: An Exploratory Study of State Statistics") that there is an annual incidence of 2 million reportable elder abuse incidents in domestic settings.

In 1990, the DHHS Office of the Inspector General released a report entitled "Resident Abuse in Nursing Homes." According to the report: (1) There is widespread abuse in nursing homes; (2) reporting systems for abuse complaints involving nursing home residents are inadequate, and; (3) State and Federal activities to prevent abuse of nursing home residents need strengthening.

Residential long term care facilities or nursing homes provide care to the most chronically ill, to the most physically and mentally impaired elderly. As the number of older persons grows, and especially as the number of "old-old" (those older persons over 85 years in age) increases, the need for institutional care will also increase. Because of their illnesses and impairments, institutionalized older persons are particularly vulnerable to abuse, neglect, and exploitation.

The ongoing concern about the quality of life and the quality of care of older persons in long term care facilities led to the establishment of the Long Term Care Ombudsman program under Title III of the Older Americans Act. Each State Ombudsman program is responsible for the investigation and resolution of complaints made by or on behalf of residents in long term care facilities, including board and care facilities. These complaints may relate to abuse or neglect or to a variety of other issues which have an effect on the health, safety, welfare, or rights of residents. Recent expansion of title III funding for the Ombudsman program is aimed at addressing complaints of abuse in long term care facilities, including board and care homes.

Ombudsman programs are also responsible for analyzing and monitoring the development and implementation of Federal, State, and local laws, regulations, and policies which affect long term care residents and for providing recommendations for resolving issues related to the care of older persons in long term care facilities.

In order to carry out their many responsibilities, Ombudsman programs must recruit, train, and retain both skilled professional staff and teams of dedicated volunteers. In 1988, nationwide, State Ombudsman programs handled 129,000 complaints (73% in nursing homes, 12% in board and care homes). There were almost 600 Ombudsman programs operating at the local level.

The work of the proposed National Eldercare Institute on Elder Abuse and State Ombudsman Services on behalf of vulnerable older persons will be integrated in and supportive of the National Eldercare Campaign. The Institute is expected to undertake functions and activities that address the problems associated with the maltreatment of older persons, in both domestic and institutional settings. The Institute is also expected to support the development and effective operation of Ombudsman programs across the nation and within each State. Institute applicants must therefore demonstrate a strong knowledge base and a track record of substantive nationwide achievement in the areas of both elder abuse and State Ombudsman program issues, as well as extensive nationwide experience in working with the national, State, and local organizations active in these fields.

Among the elder abuse issues to be addressed by the Institute are the following:

- Increased public awareness of elder abuse and increased willingness of those affected to seek help and outside intervention;
- Improvement of State and community programs to prevent, identify, report, and resolve elder abuse cases through coordinated ombudsman, protective, social, medical, legal, and enforcement services;
- Close scrutiny and analysis of Federal and State program policies, legislation, legislative trends, regulations, and their impacts related to State and local elder abuse programs; and
- Increased understanding of the nature, scope, and causes of domestic elder abuse; the comparative strengths and weaknesses of mandatory versus voluntary State reporting systems; best practices in coordinating and improving methods of preventing, reporting, investigating, and providing follow-up on elder abuse cases; and estimates of the programmatic and financial resources needed in implementing best practices locally and Statewide.

With respect to State Ombudsman Services, the Institute should focus its activities on such areas as the following:

- Examination of trends in State program development, analysis of systems changes needed to improve program effectiveness, and dissemination of information about best practice models;
- Identification and analysis of Federal legislation, such as the Omnibus Budget Reconciliation Act(s), which impact on the role and function of Ombudsman programs;
- Examination of effective models for coordinating Ombudsman programs with such other relevant programs as adult protective services, Title III legal services, licensure agencies, Medicaid fraud investigation units, law enforcement and Area Agencies on Aging;
- Analysis of the correlates/causes of elder abuse in institutional settings such as staff capabilities, physical and financial resources, the presence or lack of a family/informal support network for the resident, and the institution's record of compliance with regulatory standards;
- Strengthening linkages between the Ombudsman program and programs administered by the Health Care Financing Administration; and
- Increasing the professional expertise of Ombudsman personnel by strengthening State training programs.

In responding to these issues, the National Eldercare Institute on Elder Abuse and State Ombudsman Services is expected to carry out the core functions and activities set forth for all Eldercare Institutes. Some specific activities which might be undertaken by the Institute in support of the National Eldercare Campaign include, but are not limited to, the following:

Translation of research findings into useful and pragmatic guides for follow-up action by national, State, and community eldercare coalitions and other appropriate agencies and organizations;

Analysis of those factors and key issues that have an impact on the development of more effective elder abuse programs and State Ombudsman programs;

Development, adaptation, synthesis and dissemination of technical assistance and training materials to meet the specialized needs of different audiences, particularly national, State, and community eldercare coalitions; and

Convening or participating in symposia, seminars, and conferences to transfer knowledge and exchange practical information on preventing elder abuse and improving State Ombudsman programs; such meetings should facilitate the exchange of timely and useful information between the Aging Network and other organizations not traditionally identified as providers of eldercare.

3. National Eldercare Institute on Older Women

The impetus for establishing a National Eldercare Institute on Older Women is based on the urgent need to address the eldercare needs of older women, particularly minority older women. Eldercare is predominantly an older women's issue. Among those older persons at risk—the old-old, the abused, the chronically impaired, the socially isolated, etc.—women comprise the large majority of those in need of eldercare services. The problem, is compounded by the fact that older women make up 71 percent of the elderly poor.

Moreover, those older women with incomes near or below po—overty levels are likely to be minority older women. Because most minority older women live alone, are poorer, unskilled, and have more than one major health problem, there is a need to focus particular attention on the eldercare and related issues–employment, income security, health, etc.—of minority older women.

Older women are the majority of caregivers and thus constitute a critical resource in a nationwide effort to provide quality eldercare services. But that resource is being eroded. The burdens of caring for victims of Alzheimer's Disease and related dementias take a heavy toll. As caretakers, older women run the risk of not just burnout but also of serious physical injury and impairment, the result of having had to take on the heavier duties of caregiving—moving, lifting, and the like—for a disabled spouse or other family member.

Single older women face different but often equally challenging circumstances and prospects. Due to their lack of education or previous work experience, many single older women are underemployed or unemployed. A large number are widows and live alone. One-third rely on social security benefits for at least 90 percent of their income. In addition, Medicare pays a smaller percentage of medical bills for single women. Without spousal support or the benefit of survivor pensions, many older women lack the essential economic, physical and emotional support that can mean the difference between a healthy and rewarding retirement and rapid physical and emotional deterioration.

The proposed National Eldercare Institute on Older Women will have an important role to play in the National Eldercare Campaign. Institute applicants must demonstrate a strong knowledge base and a track record of substantive nationwide achievement in issue areas concerning older women and eldercare programs and services. The applicant must also show it has extensive nationwide experience collaborating with those national, State, and local organizations which have an overlapping interest in combining their work on behalf of older women with an active role in the National Eldercare Campaign. Some of the activities which might be undertaken by the National Eldercare Institute on Older Women include, but are not limited to, the following:

- Examine issues directly related to older women, and work in support of the National Eldercare Campaign, to focus national attention on the critical problems facing older women, particularly low-income minority older women.
- Review the state of knowledge regarding older women's issues with particular attention to minority older women, single older women, and family caregivers; analyze the current and future settings for providing quality eldercare services to older women; prepare cogent and realistic options for consideration by national, State, and community eldercare coalitions in addressing older women's issues, now and in the future.
- Identify model approaches and best practice materials regarding programs and outreach efforts to increase eldercare services responsive to the needs of older women; highlight effective approaches to addressing employment, income security, health, caregiving, and other issues related to older women.
- Incorporate model approaches and best practice information into training and technical assistance materials for use in conjunction with the work of national, State, and community eldercare coalitions.
- Convene symposia, seminars, and conferences to facilitate the exchange of information and ideas on the issues of older women; such meetings should facilitate the exchange of timely and useful information between the Aging Network and other organizations not traditionally identified as providers of eldercare.

4. National Eldercare Institute on Multipurpose Senior Centers and Community Focal Points

While the exact number of senior centers in this country is not known, it is clear they are one of the major providers of community-based services for older persons. For both the well and the at-risk elderly, senior centers are a first line of defense in maintaining their independence. A fully developed multipurpose center will provide congregate meals, social and recreational opportunities, educational activities, health promotion programming, a variety of supportive services and referral to other community resources. A National Eldercare Institute on Multipurpose Senior Centers and Community Focal Points would address the critical roles played by these community organizations in a comprehensive and coordinated system of eldercare services for older persons.

The Older Americans Act calls for Area Agencies on Aging to "designate, where feasible, a focal point for comprehensive delivery in each community to encourage the maximum colocation and coordination of services for older individuals, and give special consideration to designating multipurpose senior centers as such focal points." This provision is reinforced and elaborated in the Title III regulations.

In recent years, AoA has supported this development through training and technical assistance efforts designed to strengthen the capacity of the aging network to develop such focal points. AoA also has implemented an initiative known as the Community Achievement Awards to recognize communities which have made significant progress in developing exemplary systems of services for older persons.

Although much needs to be learned about the development of senior centers and community focal points, a substantial body of knowledge and experience already exists. That base of knowledge and experience can now be augmented by a growing understanding of the importance of non-traditional resources and approaches in providing eldercare services to older persons at risk.

The proposed National Eldercare Institute on Multipurpose Senior Centers and Community Focal Points will play a major role in linking national, State, and community eldercare coalitions to the information they need to integrate senior centers and community focal points into effective community-based eldercare service delivery systems. Institute applicants must demonstrate that they have the requisite knowledge, and the track record of nationwide achievement, to make them well qualified to work effectively with national, State, and community eldercare coalitions. The Institute should address the following major concerns, among others, relative to senior centers and community focal points:

• Increasing their accessibility and responsiveness to the needs of elderly at risk of losing their independence, in particular: those without formal or informal caregiving support systems, low income and minority older persons, the frail, rural elderly, and other vulnerable groups among the older population;

• Increasing the provision of multiple services at each location by broadening the operation to include the nontraditional resources of a variety of organizations with an emerging interest in aging programs and issues;

• Planning and providing the necessary resources for community focal points to serve as the entry point into the service system;

• Adaptation and implementation of senior center standards and assessment procedures;

• Strengthening programs that encourage senior center participants to be public policy advocates on behalf of other seniors;

Through a planned, pro-active approach to issue analysis and information dissemination, the Institute will help States, localities, service providers, and others to improve older persons' access to community-based services. This will be accomplished through a number of methods, including:

• Conducting analyses of the key factors and issues that affect the development, organization, and operation of senior centers and community focal points as priority resources to serve the at-risk older population; translating the results of these analytical studies into useful and pragmatic guides for action by national, State, and community eldercare coalitions in promoting in-home and community services for at-risk elderly;

• Disseminating to national, State, and community eldercare coalitions and other appropriate audiences source materials and pertinent information on developments relevant to multipurpose senior centers and community focal points; and

• Development, adaptation, and synthesis of technical assistance and training materials to meet the specialized needs of national, State, and community eldercare coalitions and other appropriate audiences; and

• Convening or participating in symposia, seminars, and conferences to transfer knowledge and exchange practical information on the roles of senior centers and community focal points; such meetings should facilitate the exchange of timely and useful information between the Aging Network and other organizations not traditionally identified as providers of eldercare.

5. National Eldercare Institute on Transportation

The ability to access such community services as banks, doctors' offices, food stores, pharmacies, and social services is an important factor in determining whether an elderly person can live independently. Access to these services for the at-risk elderly population is often dependent upon the availability of transportation services. Transportation services are also necessary for continued social interaction, recreation, religious purposes and general usefulness. The inability to maintain these activities often diminishes an older person's sense of well-being. By the turn of the century the majority of the elderly will live in low-density communities in either the suburbs or rural areas.

It is important that there be an effective and affordable system of transportation services available to the at-risk elderly population if they are to avail themselves of community-based services. The Administration on Aging will establish a National Eldercare Institute on Transportation, in recognition of the importance transportation plays in making services accessible and maintaining a socially healthy life style for older persons.

The National Eldercare Institute on Transportation will support the goals of the National Eldercare Campaign by helping to ensure that older persons can remain in their own homes for as long as possible. The Institute will attempt to ensure more efficient and effective community-based transportation services for older persons at risk of losing their independence. Institute applicants must demonstrate that they have the requisite knowledge, capability, and track record of substantive nationwide experience to work effectively on transportation issues with the National Eldercare Campaign participants—the Aging Network, professionals in the field of aging, agencies and organizations that traditionally provide transportation services, and organizations not traditionally associated with providing such services to the elderly. Some of the activities which might be undertaken by the Institute include, but are not limited to, the following:

• Conduct analyses of transportation-related policies at national, State, and local levels as those policies may relate to the National Eldercare Campaign and to older persons at risk. Policies to be analyzed may be those of national transportation organizations that have existing relationships with the Aging Network as well as those of organizations not traditionally identified as providers of eldercare services, such as private sector providers of bus and taxi services.

• Develop information on transportation services in areas of major national concern such as how best to target transportation services to elderly populations at greatest risk, particularly older women, older persons who live alone, rural elderly, elderly members of minority groups and the old-old.

• Collect and analyze information and develop transportation management systems that are responsive to the work of national, State, and community coalitions as part of the National Eldercare Campaign and to the coordination of community-based transportation services by State and Area Agencies on Aging and transportation service providers.

• Work with AoA and other organizations to synthesize best practice materials that exemplify the effective provision of community-based transportation services by agencies and organizations that have an interest in the well-being of older Americans. Develop methodologies to assist National and State organizations in the transfer of best practices to their State and local affiliates and to encourage the replication of these best practices.

• Develop training modules and technical assistance materials for persons working at the national, State and local levels in the National Eldercare Campaign. These modules and materials should be designed to improve the provision of community-based transportation services to older persons at risk of losing their independence. The Institute would be expected to identify existing unique and innovative training modules and technical assistance materials developed by State and Area Agencies on Aging, service providers and other sources that can be shared with the participants in the National Eldercare Campaign, the Aging Network and other public and private sector organizations that provide transportation services to older persons at risk.

• Convene and participate in national and regional conferences, seminars, workshops and roundtables on various topics related to providing community-based transportation services to older persons at risk of losing their independence. Meetings should facilitate the exchange of timely and useful information between the Aging Network and other organizations not traditionally identified as providers of eldercare.

6. National Eldercare Institute on Housing and Supportive Services

A recent housing preference study conducted by the American Association of Retired Persons showed that 86% of older consumers said they wanted to stay in their present homes and never move; this is up from 78% in 1986. Many of those surveyed acknowledged a need for supportive and transportation services to remain independent. These findings are consistent with other studies of elderly housing which have documented the growing problem of the elderly who are staying in their homes, housing complexes and apartment buildings, but lack the necessary supportive services and are at risk of losing their independence.

The expansion of elderly housing options and safer living arrangements can contribute to an elderly person's ability to live independently when linked to an effective system of community based supportive services. Indeed elderly housing options can be seen as a form of supportive service or as enhancing access to supportive services. For example, many elderly homeowners may be cash poor with no means to tap their home equity because there is no home equity conversion program available. Where home equity conversion programs do exist, studies have shown that the elderly use the income to purchase needed services for themselves or to improve their homes to make them safer and more liveable. Many homes owned by the elderly are several decades old and require repair, upgrading, or retrofitting. Lack of funds may prevent needed improvements or modifications to preserve the home's suitability for an elderly person's reduced physical capacity.

Home sharing may be an appropriate solution which provides social support and help with caring for the home. An accessory apartment in a home that is now too large for an elderly owner may provide additional financial support. Echo housing also provides an elderly resident with necessary social and caregiving supports.

Over the past several years AoA has supported a number of initiatives in elderly housing. Our goal has been to expand the availability of affordable housing alternatives, increase the capacity of the aging network to work with other networks and provide public education and information to the elderly and their families to make informed decisions about their housing choices. While much has been accomplished, more needs to be done. Other networks and organizations, not traditionally associated with the problems of the elderly, need to become part of the effort. The demographics of an aging society are such that the traditional organizations and networks cannot do the job alone if we are to effectively meet the challenge in the years ahead. Failure to take action risks the likelihood of increasing numbers of the elderly being institutionalized.

To address this challenge, AoA will support the establishment of a National Eldercare Institute on Housing and Supportive Services. Institute applicants must demonstrate a strong knowledge base and a track record of substantive nationwide achievement regarding housing, supportive services, and related eldercare issues, as well as extensive nationwide experience in working with national, State, and local organizations active in these program areas.

The Institute will work cooperatively with AoA to lend support to the National Eldercare Campaign and to the aging network. One of its primary missions will be to provide a focal point for information about non-traditional approaches to the care of older persons at risk through the integration of supportive services with elderly housing options. The Institute's program should be focused on supporting national, State, and community eldercare coalitions as they promote the development of community based systems of eldercare services for older persons in their State. Some of the activities which might be undertaken by the Institute include, but are not limited to, the following:

- Identifying and analyzing developments which are relevant to the linking of housing and supportive services to the programmatic initiatives of the national, State and community eldercare coalitions.
- Analyzing, synthesizing, and disseminating information on housing and supportive services for older persons at risk and putting such information into formats which are useful to national, State and local eldercare coalitions. Emphasis should be placed on the development of practical products such as a useful instrument or tool; educational, practice and technical assistance materials; or descriptions of non-traditional approaches in operation.
- Providing training, technical information and expertise to States, communities, educational institutions, professionals in the field of housing and supportive services, and others active in national, State, and community eldercare coalitions. Emphasis should be placed on the training of staff from the aging network and other organizations on key practical issues relating to the development of non-traditional approaches to linking housing and supportive services to community-based eldercare systems.
- Convening and participating in national and regional conferences, seminars, workshops and roundtables on various topics related to providing housing and supportive services to older persons at risk of losing their independence. Meetings should facilitate the exchange of timely and useful information between the Aging Network and other organizations not traditionally identified as providers of eldercare.

7. National Eldercare Institute on Nutrition Services

Favorable nutritional status throughout life can increase life expectancy. As people age they experience various nutritional problems and needs that are related to the many environmental, social, economic, and physical factors associated with or related to the process of aging.

To sustain these improvements in the area of nutrition and related services for older Americans in particular, will require more than the traditional efforts of public and private sector agencies active in the field of aging. Many of the at-risk elderly will need assistance with shopping, meal preparation, and eating. Nutrition intervention services, such as congregate and home delivered meals and shopping assistance, all appear to have a positive impact upon the quality of life of the older person. Home delivered meal programs are especially well-suited to respond to the needs of those single older persons who have no informal or formal support system. We face a challenge in developing the resources to maintain these nutrition programs and services for an expanding at-risk older population. Meeting that challenge is the task of the National Eldercare Campaign and the hundreds of participating eldercare coalitions whose success will depend considerably on their developing non-traditional resources and approaches to complement the efforts of the public, voluntary, and private sectors.

Title III (C) of the Older Americans Act recognizes the critical nature of nutrition services. The Elderly Nutrition Program is the largest funded program administered by AoA and provides more units of direct service to America's elderly than any aging program in the country. It is also the program that provides the Aging Network with its largest pool of volunteers.

The National Eldercare Institute on Nutrition will collaborate with AoA to support the National Eldercare

Campaign by helping to ensure greater efficiency and effectiveness in the delivery of in-home and community-based nutrition services to older persons at risk of losing their independence. Institute applicants must demonstrate a strong knowledge base and a track record of substantive nationwide achievement regarding nutrition services and related eldercare issues, as well as extensive nationwide experience in working with national, State, and local aging organizations active in this program area. Some of the activities which might be undertaken by the Institute include, but are not limited to, the following:

- Conduct analyses of nutrition related policies of national, State, and local organizations as those policies may relate to the National Eldercare Campaign and to older persons at risk. Policies to be analyzed may be those of national nutrition organizations that have existing relationships with the Aging Network as well as those of organizations not traditionally identified as providers of eldercare services, such as private sector food processors and distributors.
- Develop information on nutrition services in areas of major or national concern such as how best to target nutrition services to elderly populations at greatest risk of malnutrition, particularly older women, older persons who live alone, rural elderly, elderly members of minority groups and the old-old.
- Collect and analyze management information and develop management systems that are fully responsive to the needs of the National Eldercare Campaign and to the provision of in-home and community-based nutrition services by State and Area Agencies on Aging and nutrition service providers.
- Synthesize best practice materials that exemplify the effective provision of in-home and community-based nutrition services by agencies and organizations that have an interest in the nutritional well-being of older Americans. Develop methodologies to assist national and State organizations in the transfer of best practices to their State and local affiliates and to encourage the replication of these best practices.
- Develop training modules and technical assistance materials for persons working at national, State and local levels in the National Eldercare Campaign. These modules and materials should be designed to improve the provision of in-home and community-based nutrition services to older persons at risk of losing their independence. The Institute would be expected to identify existing unique and innovative training modules and technical assistance materials developed by State and Area Agencies on Aging, service providers and other sources that can be shared with the participants in the National Eldercare Campaign, the Aging Network and other public and private sector organizations that provide nutrition services to older persons at risk.
- Develop and convene national and regional conferences, seminars, workshops and roundtables on various topics related to providing in-home and community-based nutrition services to older persons at risk of losing their independence. Meetings should facilitate the exchange of timely and useful information between the Aging Network and other organizations not traditionally identified as providers of eldercare.

8. National Eldercare Institute on Human Resources Development

The increasing number of older persons in our population has correspondingly increased demand for specialized programs and services for both well and at-risk elderly. Responding to this demand, the private sector, Federal, State and local governments, and non-profit agencies and organizations have expanded their operations and created programs to serve older persons. The knowledge, training, and skills of the personnel who manage and administer these aging programs—especially programs of eldercare services to older persons at risk—are among the critical concerns to be considered by a National Eldercare Institute on Human Resources Development. Other key factors which will shape the Institute's agenda are Federal, State and local regulations affecting employment standards and the terms and conditions of employment affecting retention of experienced personnel.

For the past twenty-five years, the Administration on Aging has been one of several Federal agencies investing discretionary funds to support the development of specialized training programs—both in the basic fields that underlie the study of aging and gerontology, and in applied fields and professions that have direct contact with and impact on older persons. During this period, AoA has been a principal source of funding for State and Area Agencies on Aging, and other constituent elements of a national network on aging, which employ a modest but important pool of personnel working on behalf of the elderly.

The investment by AoA and other Federal agencies in education and training programs for persons working in the field of aging, including qualified older persons—as well as Federal health, housing, economic security, social service, and other programs with an elderly clientele—affect the quality and availability of personnel working in these fields. The private profit and non-profit sectors also play major roles as the initiators of innovative and gap-filling programs, as employers, as trainers and educators, and as the developers of personnel practices which meet the minimum standards set by States and the Federal government for their particular sector (housing, health, insurance, transportation, etc.).

Paralleling the broad continuum of care and services for older persons is an equally broad range of issues related to employment and training of persons working with or on behalf of the elderly. The National Eldercare Institute on Human Resources Development must, of course, have the capacity to deal with those broad concerns, but also the knowledge and track record of nationwide experience and achievement to focus effectively on training and personnel issues pertinent to eldercare service programs. The Institute will undertake, but not be limited to, the following functions and activities:

- Serve as a resource to the National Eldercare Campaign by selectively collating and synthesizing best personnel practices and training materials affecting in-service training and continuing education of persons employed in relevant occupations and service areas;
- Provide projections of the type and number of personnel required to respond to the eldercare needs of an aging society; provide analyses of the implications of the Federal and State programs with respect to employment and training in the field of aging, particularly as they relate to the development of personnel better qualified to serve older persons at risk;
- Develop and disseminate a national quarterly calendar of regional and national meetings of organizations that offer institutes, seminars, and symposia in their meetings related to human resources development; dissemination will be to national, State, and community eldercare coalitions, aging network agencies, and all national and regional organizations with interest in these topics;
- Plan and conduct activities at national meetings of academic and training organizations, national aging organizations, professional societies, occupation-based trade associations, and other private sector groups not traditionally involved in aging issues, to

sensitize them to the need for specialized training and employment practices that contribute materially to better eldercare services for older persons; and

• Collaborate with other Institutes in defining and studying issues of employment and training in the field of aging, especially those relevant to the provision of eldercare services to at-risk older persons. Joint efforts may include co-sponsorship of national or regional symposia, conferences, or other training events; and/or co-authorship of technical assistance documents and other media materials.

9. National Eldercare Institute on Health Promotion

To encourage the adoption of healthy behaviors by older persons and the reduction of risk for chronic and preventable conditions, the Administration on Aging will support the establishment and operation of a National Eldercare Institute on Health Promotion. One of the main goals of health promotion and disease prevention among older persons is to increase their years of functional independence and their ability to perform the activities of daily living. Another goal is to control some of the health problems of old age through such preventive measures as adequate and appropriate exercise, proper diet, immunization, smoking cessation, cancer screening, cholesterol level testing and blood pressure checks. A growing body of evidence indicates that changing certain health behaviors, even in the later years, can benefit health and improve the quality of life.

Most of the diseases that affect older persons in this country are the so-called "lifestyle diseases," conditions such as diabetes, heart disease, and lung cancer, which are strongly linked to such risk factors as cigarette smoking, poor nutrition, lack of regular exercise, and chronic stress. Some of these lifestyle habits have developed as America has become more sedentary in its work habits at the same time as our living conditions have been altered by mobility, economics, and other factors. Among the aging population, 80% suffer from one or more of these lifestyle diseases and/or other chronic conditions and about half of the elderly are limited in their daily activities.

In the report Healthy People 2000: National Health Promotion and Disease Prevention Objectives, three broad goals are identified: (1) Increase the span of healthy life for Americans; (2) reduce health disparities among Americans; and (3) achieve access to preventive services for all Americans. In the same report, a number of objectives for older persons are discussed. One overall theme is the longer a person lives, the greater the likelihood of increasing functional dependence. Statistics indicate that although people aged 65 and older have an average of 16.4 years of life remaining, they have only an average of 12 years of healthy life remaining. People aged 85 and older constitute a substantial share of all persons who are not able to be independent in physical functioning. Nevertheless, there is increasing evidence that even among frail elderly, improved diet and appropriate exercise can improve a person's functional capacity and reduce some of his need for assistance with activities of daily living.

The National Eldercare Institute on Health Promotion will focus on encouraging older persons to adopt lifestyle habits and risk reduction behaviors which will lead to improved well-being and reduction in the need for eldercare. Although a number of health promotion programs for older persons have been implemented across the country, there is a need for a great many more programs to assist the increasing numbers of older persons in maintaining their well-being and independence as long as possible. It is important to disseminate models of what has worked and why and to collect information about additional programs of which the aging and health networks should be aware. It is also critical to begin to establish standards by which health promotion programs can be evaluated as to their utility for a given population.

The National Eldercare Institute on Health Promotion will be actively involved in these efforts. One goal of the Institute will be to improve the transfer of knowledge about health promotion to appropriate audiences across the country. Information should be made available to national, State, and community eldercare coalitions, national organizations participating in the National Elderly Campaign, State and Area Agencies on Aging, State and local Health Departments, universities with medical schools, nursing schools, and programs in geriatrics and health care, hospitals, nursing homes, senior centers, nutrition sites, and to older persons and their caregivers. Information should be made available about various health promotion strategies for older persons and how to undertake programs to change behaviors, on both a group and individual basis. Information should also be collected and disseminated about opportunities which exist for training, education and research projects in health promotion and aging.

Institute applicants must demonstrate that they have the knowledge, the practical experience, and the track record of nationwide achievement to work effectively with national, State, and community Eldercare Coalitions in addressing the following major concerns:

• Translating research findings into useful and pragmatic guides for action by national, State, and community eldercare coalitions in developing health promotion programs, particularly programs which use non-traditional resources and approaches;

• Incorporating best practice information on health promotion into training and technical assistance materials for use in conjunction with the work of national, State, and community eldercare coalitions;

• Identifying barriers to reaching low income minority populations and the development and implementation of health promotion strategies for overcoming these barriers;

• Disseminating to national, State, and community eldercare coalitions and other appropriate audiences source materials and pertinent information on program developments related to health promotion;

• Establishing linkages with other organizations who are working in this field as well as those organizations which may have an emerging interest in eldercare services and in committing their resources to address the health problems of older persons; and

• Convening or participating in symposia, seminars, and conferences to transfer knowledge and exchange practical information on health promotion programs for older persons; such meetings should facilitate the exchange of useful information between the Aging Network and organizations not traditionally identified with eldercare.

10. National Eldercare Institute on Income Security

Many older Americans anticipate retirement and look forward to this time of their lives. However, a good number of older people cannot afford to leave the world of work, or, if they do, discover that their fixed incomes are not high enough to cover such contingencies as inflation, rising real estate taxes, or a serious illness that results in big medical bills. In 1989 the median income of persons 65 years and older was only $9,578 from all sources. The income levels of one out of every five persons 65 and over are in the "poor" or "near-

poor" ranges. Moreover, poverty among the elderly is much more apt to be long term poverty—poverty that is persistent and inescapable.

The risk of being poor is typically two to three times greater for minority elderly; only 10% of elderly Whites are poor, but 31% of elderly Blacks and 21% of elderly Hispanics are poor. In addition to minorities, other at-risk groups include women, for whom poverty levels are significantly higher than they are for men (71% of the elderly poor are women), and older persons living alone or with non-relatives, who comprise 64% of the elderly poor.

In order to address the eldercare needs relating to the income security of older persons at risk, particularly older minorities, women, and people who live alone or with non-relatives, the Administration on Aging proposes to establish a National Eldercare Institute on Income Security. The proposed Institute will address issues that include, but are not limited to: (1) Benefits and entitlement programs, including sub-issues related to eligibility criteria, gaining access, and improved outreach efforts; (2) significant drains on the income of older persons, e.g. health care, long term care, and housing, and ways of meeting these cost burdens; (3) retirement and financial planning and counseling; (4) employment opportunities and re-training programs for older people; and (5) consumer choices, including economical purchasing strategies such as buying in bulk through the use of shopping cooperatives and similar plans, the use of generic drugs, etc.

In responding to these issues, the National Eldercare Institute on Income Security is expected to integrate its efforts with, and be supportive of, the National Eldercare Campaign. Institute applicants must therefore demonstrate that they have the knowledge, capability, and track record of substantive nationwide experience and achievement to work effectively with national, State, and community eldercare coalitions in carrying out the following major activities, among others, relative to promoting income security for older persons at risk:

- Conduct analyses of the key factors and issues relative to income security programs for the at-risk older population; translate study findings and results into useful and pragmatic proposals for action to be considered by individuals and groups who are involved in the National Eldercare Campaign;
- Facilitate the transfer and dissemination of pertinent information on income security to national, State, and community eldercare coalitions and other appropriate audiences;
- Synthesize, adapt, develop and disseminate training materials and technical assistance information to appropriate audiences across the country on the relevant issues—such audiences to include national, State, and community eldercare coalitions, professionals, aging service providers, and the public;
- Convene seminars, symposia and at least one national conference a year; such meetings should be designed so that aging network organizations and other organizations not traditionally identified as providers of eldercare can come together to share information on programs and projects focused on issues of income security for the at-risk older population.

11. National Eldercare Institute on Employment and Volunteerism

The dramatic increase in the number of persons over the age of 60, particularly the "old-old" (those 85+ years old) who are most at risk of losing their self-sufficiency, will require new and innovative approaches to providing eldercare services. The ability to make the best use of human resources, through both volunteerism and paid employment, will be critical to the Nation's ability to meet the challenges of the 21st century.

Many individuals have indicated their interest and commitment to volunteering their time, talents and energy on behalf of older persons and others in their community. In fact, volunteers have been an integral and essential part of Older Americans Act programs since its inception. Volunteers are used in such areas as policy formulation, needs assessment, systems design, advocacy, program administration, and service delivery. The services that volunteers provide are vital to helping older persons live independent, meaningful, and dignified lives in their own homes and communities.

The need for increased numbers of volunteers to serve the elderly will become even more apparent in future years as the increase in our older population, and particularly the old-old further strains limited resources. There are now approximately 450,000 persons, most of them older people, who volunteer in Older Americans Act programs. In order to meet the increasing demand for services, we must maximize our resources and expand existing volunteer efforts by encouraging others to participate.

Currently, our society does not offer adequate employment opportunities for older Americans. Over the next several decades, American workers will witness rapid and remarkable changes in the industrial and occupational structure of their workplace. Our workforce and the very nature of work itself will undergo significant transformations. Older workers will become increasingly important to the success of American industry, not only as a resource for production, but also for the maturity and experience they bring to the workplace.

Studies have indicated that older persons want strongly to remain independent and contributing members of society, whether through volunteer or paid employment opportunities. In order to meet this challenge, the Administration on Aging will support the establishment of a National Eldercare Institute on Employment and Volunteerism. Institute applicants must demonstrate a strong knowledge base and a track record of substantial nationwide achievement with respect to employment and volunteerism issues as they relate to the Eldercare Campaign, as well as extensive nationwide experience in working with national, State, and local organizations active in the program areas of both employment and volunteerism. However, during the first year, the Institute will be expected to concentrate efforts in goal areas related to volunteerism. Thus, the initial activities of the institute will be expected to include, but not be limited to, the following:

- Conduct analyses on the volunteerism policies of national, State, and local organizations as those policies may relate to the National Eldercare Campaign and to older persons at risk. Policies to be analyzed may be those of national and State Organizations that have existing relationships with the Aging Network as well as those of organizations not traditionally identified as providers of volunteer eldercare services. Issues should be analyzed in such areas as the recruitment, training and retention of volunteers for eldercare.
- Synthesize best practice materials that exemplify the effective utlitization of volunteers to provide in-home and community-based services to older persons at risk. These best practice materials should include, but not be limited to, volunteer fund raising, monitoring tools, successful models of State approaches to addressing liability insurance for volunteers and other relevant subjects.
- Develop methodologies to assist national and State organizations in the transfer of best practices to their State and local affiliates and to encourage the replication of these best practices.

• Provide support to the National Eldercare Campaign by public education activities that emphasize the opportunities for volunteer participation in programs on behalf of older persons at risk. These efforts would be targeted both at encouraging the public and private sectors to recruit, train and retain older volunteers for eldercare service and encouraging older persons to remain as contributing members of society through volunteer opportunities in eldercare. The Institute should provide assistance aimed as well at strengthening the existing system of volunteerism in Older Americans Act Programs.

• Develop training modules and technical assistance materials for persons working as volunteers and administering volunteer programs at the national, State and local levels in the National Eldercare Campaign. These modules and materials should be designed to improve in-home and community-based volunteer services to older persons at risk. The Institute would also identify innovative training and technical assistance materials that can be shared with participants in the National Eldercare Campaign, the Aging Network and other public and private sector organizations that provide volunteer services to older persons at risk. Specialized training and technical assistance materials should be developed and disseminated in such areas as "state-of-the-art" approaches to recruitment of special cadres of volunteers (e.g. in-home services) and retention of volunteers and fund raising for local volunteers.

• Develop and convene national and regional conferences, seminars, workshops and roundtables on various topics related to the use of volunteers to provide in-home and community-based services to older persons at risk of losing their independence. Such meetings should facilitate the exchange of timely and useful information on volunteerism between the Aging Network and other organizations, including those not traditionally identified as providers of eldercare.

12. National Eldercare Institute on Business and Aging

Building our Nation's capacity to respond to the needs of an increasing older population is a societal issue. The demographic changes expected in the next century dictate the need for new responses. Public resources alone will not meet the needs of the elderly. New approaches involving the public, private and voluntary sectors are needed. Business and industry currently play a major role in the lives of older Americans as employees, retirees and consumers. The need for their involvement will increase along with the growth in America's older population.

Corporate America has traditionally provided financial or in-kind support to assist community efforts on behalf of those in need. Business is now realizing the impact of the changing demographics of the aging population in relation to their workforce and consumer base. For many corporations, the issues of eldercare are not new. These companies have recognized the importance of providing older persons with a wide range of programs such as employment and training opportunities, innovative work options, health promotion resources, retiree programs and benefits, products and services for the older consumer, as well as supportive services for employed caregivers of older persons.

As the 21st century approaches, there is a need for the business community and the national network on aging to work in partnership to develop innovative options to meet the eldercare needs of older persons. The Administration on Aging will establish a National Eldercare Institute on Business and Aging which will be responsible for encouraging and facilitating the interest and commitment of the business community in aging concerns and eldercare programs.

Institute applicants must demonstrate that they have the requisite knowledge, capability, and track record of nationwide experience and achievement to link the private and public sectors, business and aging organizations at all levels, in support of older persons at risk. The institute will be expected to focus its attention in three key areas: (1) Activities to support the National Eldercare Campaign which is designed to improve in-home and community-based services for older persons at risk of losing their independence; (2) activities directed specifically at intensifying the awareness and involvement of the business community in aging issues; and (3) activities in concert with State and community eldercare coalitions directed at improving collaboration between the business community and State and Area Agencies on Aging and other agencies in the aging network.

Some of the activities which might be undertaken by the Institute include, but are not limited to, the following:

• Identify and disseminate for use by the national, State, and local eldercare coalitions, current materials on business and aging issues that affect eldercare such as employment and training, work/family issues, retirement planning, health insurance issues and volunteerism. In addition to responding to requests for information, the Institute will develop public awareness programs to stimulate interest in aging issues and programs by business sector employees and employers.

• Synthesize best practice materials that exemplify effective collaboration between the Aging Network and business to improve in-home and community-based services to older persons at risk. Develop methodologies to assist national and State aging organizations and business in the transfer of these best practices to their State and local affiliates and to encourage the replication of these best practices.

• Develop training modules and technical assistance materials for persons working at the State and local levels on the National Eldercare Campaign. These modules and materials should include approaches and techniques for successful collaboration between the Aging Network and business. The focus of these training and technical assistance materials should include coalition building, methods of contacting business, overcoming barriers to collaboration and development of model partnership agreements. The Institute would be expected to identify existing unique and innovative training modules and technical assistance materials developed by State and Area Agencies on Aging, service providers and other sources that can be shared with the participants in the National Eldercare Campaign, the Aging Network and other public and private sector organizations.

• Develop methods such as a loaned executive program to facilitate the exchange of executives between the National Network on Aging and business.

• Facilitate the exchange of information and ideas on the issues of business and aging through the dissemination of a regular newsletter on business and aging issues and by developing and convening national and regional conferences, seminars, workshops and roundtables on various topics related to facilitating the interest and commitment of business to eldercare. Such meetings should facilitate the exchange of timely and useful information on business and aging issues between the Aging Network and other organizations, including those not traditionally identified as providers of eldercare.

• Develop and conduct an annual awards program to provide special

recognition to those businesses which have demonstrated leadership and commitment in developing programs and policies of mutual benefit to business and older Americans. This activity should not only honor businesses that have developed exemplary programs, but also help to stimulate comparable initiatives by other business organizations.

13. National Eldercare Institute on Coalition Building

As emphasized in part I, section A of this program announcement, because the National Eldercare Campaign is focused on better serving older persons at risk in their homes and in their communities, action at the State and local levels is critical to its success. State and community eldercare coalitions, in which State and Area Agencies on Aging have a catalytic leadership role, will be called on to demonstrate that the public, private, and voluntary sectors can be mobilized around an eldercare agenda and cooperate effectively in providing home and community-based services for older persons at risk. All of the twelve topical National Eldercare Institutes described above in this announcement will provide subject matter technical assistance, knowledge, and information to the State and community eldercare coalitions. But the coalitions will also require expert support and guidance in the actual techniques and practices of community organization and coalition building, with particular relevance to aging programs, services, and organizations. To meet this objective, the Administration on Aging will fund a National Eldercare Institute on Coalition Building.

The National Eldercare Institute on Coalition Building is a key element of an overall AoA strategy to demonstrate the value of State and local coalition building in: (1) mobilizing local resources to address the service needs of the current generation of older persons at risk and (2) achieving a long range capacity to respond to the significant increases in the older population projected for the coming decades. The central part of that coalition building strategy is the State and Community Eldercare Coalition Building Demonstration Program. Under this nationwide demonstration program, the Administration on Aging will make 2-year project awards to State Agencies on Aging. A portion of the grant award will be set aside for the establishment and implementation of State eldercare coalitions, with the lion's share of the funding support earmarked for the development and operation of up to five (5) community eldercare coalitions in each State.

To realize the full potential of the eldercare coalitions, State and Area Agencies on Aging will be urged to enlist the collaboration of a wide range of public and private organizations and associations in the planning, development, and delivery of eldercare to older persons at risk, with special attention paid to organizations which have traditionally not been involved in addressing the challenges of an aging society. In tandem with its participation in an eldercare coalition, each organization would be expected to educate its own membership regarding the important issues at stake and to adopt an eldercare agenda in support of the coalition's activities. Other recommended steps for the coalitions to consider include: (1) the holding of an Eldercare Forum as a means of capturing public attention, followed up by a sustained public awareness campaign and (2) encouraging the involvement of prominent State and local elected officials to infuse the coalition, and its efforts on behalf of eldercare for older persons at risk, with even greater visibility.

The proposed National Eldercare Institute on Coalition Building would focus its effort on providing technical assistance, training, guidance, information, and other support to the State and community eldercare coalitions. In addition, the Institute would serve to coordinate and facilitate interaction between the other National Eldercare Institutes and the State and community eldercare coalitions. Institute applicants must demonstrate: (1) A solid, practical understanding of the nature and process of coalition building; (2) a track record of substantive nationwide achievement and capability in effectively assisting State and community eldercare coalitions and; (3) extensive nationwide experience in working with the State and local organizations who will comprise the eldercare coalitions. Institute applicants should address a variety of concerns and challenges—planning, developmental, organizational, and operational—that eldercare coalitions are likely to encounter. Additional information on the State and Community Eldercare Coalition Building Demonstration Program is available by contacting AoA at 202/619-0011.

Specific activities to be undertaken by the proposed National Eldercare Institute on Coalition Building include, but are not limited to, the following:

- Providing background information, issue papers, and program analyses on eldercare issues relevant to the work of the eldercare coalitions;
- Developing, adapting, and disseminating training and technical assistance materials to meet the specialized needs of the State and community eldercare coalitions;
- Incorporating model approaches and best practice materials on techniques for building collaboration and cooperation among members of coalitions for use by the State and community eldercare coalitions;
- Working with the other National Eldercare Institutes to help coordinate their activities in support of the State and community eldercare coalitions;
- Organizing regional conferences, as well as an annual national conference, for the purpose of transferring knowledge and exchanging practical information among the leadership of the State and community eldercare coalitions.

Part III. Information and Guidelines for the Application Process and Review

This part contains general information for potential applicants and basic guidelines for submitting applications in response to this announcement. Application forms are provided along with detailed instructions for developing and assembling the application package for submittal. Guidelines on applicant eligibility are provided in part I.

A General Information

1. Review Process and Considerations for Funding

Within the limits of available Federal funds, the Administration on Aging (AoA) makes financial assistance awards consistent with the purposes of this announcement and the statutory authorities contained in the Older Americans Act. The following steps are involved in the review process.

a. *Notification.* All applicants will automatically be notified of the receipt of their application and informed of the identification number assigned to it.

b. *Screening.* To insure that certain minimum standards of equity and fairness have been met, applications that fail to meet the screening criteria contained in section D below will not be reviewed and will receive no further consideration for funding.

c. *Expert Review.* Applications that conform to the requirements of this announcement will be reviewed and scored competitively against the evaluation criteria specified in section F, below, by review panels consisting of qualified persons from outside the Federal government and knowledgeable

non-AoA Federal Government officials. The scores and judgments of these expert reviewers are a major factor in making award decisions.

d. *Other Comments.* AoA solicits comments, as appropriate, from other Federal Departments, State Agencies on Aging, national organizations, interested foundations, and others. These comments are considered by the Commissioner on Aging in making funding decisions.

e. *Other Considerations.* In making funding decisions on National Eldercare Institute awards, AoA will pay particular attention to applications which demonstrate they will support the objectives of the National Eldercare Campaign and focus their efforts on older persons at risk of losing their self-sufficiency.

f. *Other Funding Sources.* AoA reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is determined to be in the best interest of the Federal government or the applicant.

g. *Decision-Making Process.* After the panel review sessions, applicants may be contacted by AoA staff to furnish additional information. Applicants who are contacted should not assume that funding is guaranteed. An award is official only upon the applicant's receipt of the Financial Assistance Award (Form DGCM 3–785).

h. *Timeframe.* Applicants should be aware that the time interval between the deadline for submission of applications and the award of a grant may be as long as six months. This time is required to review and process grant applications.

2. Notificaiton Under Executive Order 12372

This is not a covered program under Executive Order 12372.

B. Deadline for Submission of Applications

The closing date for submission of applications under this program announcement is June 28, 1991. Applications must be either sent or hand-delivered to the address specified in section D, below.

Hand-delivered applications are accepted during the normal working hours of 9 a.m. to 5:30 p.m., Eastern Time, Monday through Friday. An application will be considered as meeting the deadline if it is either:

1. Received at the mailing address on or before the deadline date; or

2. Sent before midnight of the deadline date as evidenced by either (1) a U.S. Postal Service receipt or postmark or (2) a receipt from a commercial carrier. The application must also be received in time to be considered under the competitive independent review mandated by Chapter 1-62 of the DHHS Grants Administration Manual. Applicants are strongly advised to obtain proof that the application was sent by the deadline date. If there is a question as to when an application was sent, applicants will be asked to provide proof that they have met the deadline date. Private metered postmarks are not acceptable as proof of a timely submittal.

Applications which do not meet the above deadline are considered late applications. The Acquisition and Assistance Management Branch will notify each late applicant that its application will not be considered in the current competition.

AoA may extend the deadline for all applicants because of acts of God, such as floods, hurricanes or earthquakes, when there is widespread disruption of the mail or when AoA determines an extension to be in the best interest of the government. However, if AoA does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant(s).

C. Grantee Share of Project Costs

AoA does not make grant awards for the entire project cost. Successful applicants must, at a minimum, contribute one (1) dollar, secured from non-Federal sources, for every three (3) dollars received in Federal funding. The non-Federal share amounts to at least 25% of the entire project cost.

The one exception to this cost sharing formula is for applications originating from the territories of American Samoa, Guam, the Virgin Islands or the Northern Mariana Islands. Applicants from these territories are covered by Section 501(d) of Public Law 95–134, as amended, which requires the Department to waive "any requirement for local matching funds under $200,000" for these territories.

The non-Federal share of total project costs may be in the form of grantee-incurred direct or indirect costs, third party in-kind contributions, and grant related income. If the required non-Federal share is not met by a funded project. AoA will disallow any unmatched Federal dollars. A common error to be avoided is to match 25% of the Federal share rather than 25% of the entire project cost. Applicants should be sure that they have met the match requirements before submitting their budgets.

D. Application Screening Requirements

All applications will be screened to determine completeness and conformity to the requirements of this announcement. These screening requirements are intended to assure a level playing field for all applicants. Applications which fail to meet one or more of the criteria described below will not be reviewed and will receive no further consideration for funding. Complete, conforming applications will be reviewed and scored competitively.

To be reviewed, the application must meet the following screening requirements:

1. The application must not exceed sixty (6) pages, double-spaced, exclusive of certain required forms and assurances which are listed below. Applications whose typescript is single-spaced or space-and-a-half will be reviewed only if it is determined the applicant has not thereby gained a competitive advantage.

Certain documents are excluded from the 60 page limitation: (1) Standard Forms (SF) 424, 424A (including the budget justification) and 424B; (2) the certification forms regarding (a) lobbying, (b) debarment, suspension, and other responsibility matters, and (c) drug-free workplace requirements; (3) proof of non-profit status, and; (4) indirect cost agreements.

To conform to the sixty (60) page limitation, the following guidelines are suggested:

—Summary description (one page);
—Narrative (approximately forty pages);
—Applicant's capability statement (including an organization chart) and vitae for key Institute personnel (approximately twelve to fifteen pages) and;
—Letters of commitment and cooperation (approximately four to seven pages).

2. Applications must be postmarked by midnight, June 28, 1991 or hand-delivered by 5:30 p.m., Eastern Time, June 28, 1991 to the following address: Department of Health and Human Services, Grants and Contracts Management Division, Acquisition and Assistance Management Branch, 200 Independence Avenue, SW., room 341–F, Washington, DC 20201, Attn: AoA–91–2.

Under no circumstances will applications that do not meet these screening requirements be assigned to reviewers.

E. Indirect Costs

Indirect costs generally may be requested only if the applicant has a negotiated indirect cost rate with the

Department's Division of Cost Allocation or with another Federal agency.

F. Evaluation Criteria

Applications which pass the screening will be evaluated by an independent review panel of at least three individuals. These reviewers will be primarily experts from outside the Federal government. Based on the specific programmatic considerations set forth in the description of each Institute under which an application has been submitted, the reviewers will comment on and score the applications, focusing their comments and scoring decisions on the criteria below.

1. Objectives and Need for Assistance: 25 points.

a. Does the application pinpoint relevant economic, societal, institutional, and related issues and problems to be addressed by the Institute?

b. Is the need for the proposed Institute clearly demonstrated and supported by documentation? Does the applicant provide convincing evidence that it will contribute substantially to achieving the program objectives of the National Eldercare Campaign.

c. Are the principal and subordinate objectives, functions, and activities of the Institute clearly stated, justified, innovative, and relevant to the issue/problem area?

d. Does the application include relevant data based on previous planning and policy studies in providing a thorough discussion of the current state of knowledge relevant to the proposed Institute?

2. Results or Benefits Expected: 25 points.

a. Are the expected benefits and/or results clearly identified, realistic, and consistent with the objectives and functions of the proposed Institute? Are important anticipated contributions to policy, practice, theory and/or research clearly indicated?

b. Does the application clearly indicate how the expected results will be of direct and tangible benefit to older people? Does the application describe how its products will be disseminated to and utilized by appropriate, well-chosen audiences?

3. Approach: 25 points.

a. Does the application provide a sound and workable plan of action for the proposed Institute and detail how the proposed work will be accomplished?

b. Are persuasive reasons offered for the Institute taking the proposed approach as opposed to others? Does the application clearly explain the methodology for determining if the Institute has achieved the expected results and benefits?

c. Does the proposed work/task schedule offer a logical and realistic projection of accomplishments to be achieved? Is a time-line chart or its equivalent employed to show Institute activities in chronological order and indicate the target dates for the projected accomplishments?

d. Has the application clearly identified the kinds of data to be collected and analyzed, and discussed the criteria to be used in evaluating the success of the Institute?

e. Has the applicant identified and secured the commitment of the key cooperating organizations, groups, and individuals who will work with the Institute and provided an adequate description of the nature of their participation?

4. Level of Effort: 25 points.

a. Does the applicant demonstrate that it has a track record of solid nationwide achievement as well as the requisite knowledge, experience, leadership, and staff resources to carry out the functions and activities of the proposed Institute effectively and efficiently?

b. Are the key staff well qualified to carry out the work of the Institute? Are consultants and advisors used appropriately?

c. Does the budget justification adequately describe the requisite resources for conducting the work of the proposed Institute? Is the budget reasonable in terms of the intended results?

G. The Components of an Application

To expedite the processing of applications, we request that you arrange the components of your application, the original and two copies, in the following order:

- SF 424, Application for Federal Assistance; SF 424A, Budget together with your budget justification; SF 424B (Assurances); and the certification forms regarding lobbying; debarment, suspension, and other responsibility matters; and drug-free workplace requirements. *Note:* The original copy of the application must have an original signature in item 18d on the SF 424;
- Proof of nonprofit status, as necessary;
- A copy of the applicant's indirect cost agreement, as necessary;
- Institute summary description;
- Program narrative;
- Organizational capability statement and vitae;
- Letter of Commitment and Cooperation.
- A copy of the Check List of Application Requirements (See Section K, below) with all the completed items checked.

The original and each copy of the application should be stapled securely (front and back if necessary) in the upper left corner. Pages should be sequentially numbered. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials such as agency promotion brochures, slides, tapes, film clips, etc. It is not feasible to use such items in the review process, and they will be discarded if included.

H. Communications with AoA

Do not include a self-addressed, stamped acknowledgment card. All applicants will automatically be notified of the receipt of their application and informed of the identification number assigned to it. This number and the priority area should be referred to in all subsequent communication with AoA concerning the application. If acknowledgment is not received within seven weeks after the deadline date, please notify the Acquisition and Assistance Management Branch by telephone at (202) 245–9016.

After an identification number is assigned and the applicant has been notified of the number, applications are filed numerically by identification number for quick retrieval. It will not be possible for AoA staff to provide a timely response to inquiries about a specific application unless the identification number and the priority area are given.

Applicants are advised that, prior to reaching a decision, AoA will not release information relative to an application other than that it has been received and that it is being reviewed. Unnecessary inquiries delay the process. Once a decision is reached, the applicant will be notified as soon as possible of the acceptance or rejection of the application.

I. Background Information and Guidance for Preparing the Application

In the Program Narrative of the application (see section J below), applicants are expected to demonstrate familiarity with recent and ongoing activity related to their Institute proposal. With respect to AoA-supported discretionary grant projects, information on Current AoA Projects may be obtained by contacting the Office of Program Development at 202/691–0441. Regarding Completed AoA Projects, copies of all AoA discretionary grant final reports and printed materials

are sent to: the National Technical Information Service (NTIS), an abstract clearinghouse and document source for Federally sponsored reports; AgeLine, a bibliographic database service sponsored by the AARP; and the U.S. Government Printing Office Library Program, a catalog and microfiche service for 1400 depository libraries located throughout the United States.

Information concerning access to the bibliographic and document referral services provided by these clearinghouses can be obtained through most public and academic libraries. For direct information use the following addresses and telephone numbers:

National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22151, (703) 487–4600.

AgeLine Database, BRS Customer Services, 1200 Route 7, Latham, NY 12110, (800) 345–4277.

Acquisition Unit, Library Programs Service, U.S. Government Printing Office, North Capital and H Streets, NW., Washington, DC 20401, (202) 275–1070.

J. Completing the Application

In completing the application, please recognize that the set of standardized forms and instructions prescribed by OMB is not perfectly adaptable to the particulars of this AoA Program Announcement. Wherever possible, we have attempted to iron out discrepancies. If you encounter a problem, please call (202) 619–0441 for assistance.

Forms SF 424, SF 424A, SF 424B, and the certification forms (regarding lobbying; debarment, suspension, and other responsibility matters; and drug-free workplace requirements) have been reprinted as part of this **Federal Register** announcement for your convenience in preparing the application. Single-sided copies of all required forms must be used for submitting your application. You should reproduce single-sided copies from the preprinted form and type your application on the copies. Please do not use forms directly from the **Federal Register** announcement as they are printed on both sides of the page.

To assist applicants in completing Forms SF 424 and SF 424A correctly, samples of these forms have been provided as part of this announcement. These samples are to be used as a guide only. Please submit your application on the blank copies. When specific information is not required under this program, N/A (not applicable) has been preprinted on the form.

Please prepare your application in accordance with the following instructions:

1. SF 424, Cover Page

Complete only the items specified in the following instructions:

Item 1. Preprinted on the form.

Item 2. Fill in the date you submitted the application. Leave the applicant identifier box blank.

Item 3. Not applicable.

Item 4. Leave blank.

Item 5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, applicant address, and name and telephone number of the person to contact on matters related to this application.

Item 6. Enter the employer identification number (EIN) of the applicant organization as assigned by the Internal Revenue Service. Please include the suffix to the EIN, if known.

Item 7. Enter the appropriate letter in the space provided.

Item 8. Preprinted on form.

Item 9. Preprinted on form.

Item 10. Preprinted on form.

Item 11. Enter the title of the proposed Institute.

Item 12. Not applicable.

Item 13. Enter the desired start date for the project, beginning no later than September 30, 1991, and the desired end date for the project.

Item 14. List the applicant's Congressional District and the District(s), if any, directly affected by the program of the Institute.

Item 15. All budget information entered under item 15 should cover only the first twelve months of the project period. The applicant should show the Federal grant support requested under sub-item 15a. Sub-items 15b-15e are considered cost-sharing or "matching funds". The value of third party in-kind contributions should be entered in sub-items 15c-15e, as applicable. It is important that the dollar amounts entered in sub-items 15b-15e total at least 25 percent of the total project (total project cost is equal to the requested Federal funds plus funds from non-Federal sources).

Check: Does all information entered in Items 15a to 15f cover only the first twelve months of the proposed project period, not the total costs for the entire project period?

Item 16. Preprinted on form.

Item 17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

Item 18. To be signed by an authorized representative of the applicant organization. A document attesting to that sign-off authority must be on file in the applicant's office.

2. SF 424A—Budget Information

This form is designed to apply for funding under more than one grant program; thus, for purposes of this AoA program, most of the budget item blocks are superfluous and have been marked not applicable (N.A.). The applicant should consider and respond to only the budget items for which guidance is provided below. Sections A, B, and C should include the Federal as well as non-Federal funding for only the first year of the project period.

Section A—Budget Summary

This section includes a summary of the budget. On line 5, enter total Federal Costs in column (e) and total Non-Federal Costs (including third party in-kind contributions but not program income) in column (f). Enter the total of columns (e) and (f) in column (g).

Section B—Budget Categories

Under column (5) enter the total requirements for funds (both Federal and non-Federal) by object class category.

A separate budget justification should be included to fully explain and justify major items, as indicated below. The budget justification should not exceed four typed pages and should immediately follow SF 424A.

Line 6a—Personnel: Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included under 6h—Other.

Justification: Identify the Institute Director(s) and other key personnel. Specify the key staff, their titles, and time commitments in the budget justification.

Line 6b—Fringe Benefits: Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

Line 6c—Travel: Enter total costs of out-of-town travel (travel requiring per diem) for staff of the Institute. Do not enter costs for consultant's travel or local transportation.

Justification: Include the total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Line 6d—Equipment: Enter the total costs of all equipment to be acquired by the project. For State and local governments, including Federally recognized Indian Tribes, "equipment" is non-expendable tangible personal property having a useful life of more than two years and an acquisition cost of $5,000 or more per unit. For all other grantees, the threshold for equipment if $500 or more per unit.

Justification: Equipment to be purchased with Federal funds must be justified as necessary for the conduct of the Institute. The equipment, or a reasonable facsimile, must not be otherwise available to the applicant organization or its sub-grantees. The justification also must contain plans for the use or disposal of the equipment after the project ends.

Line 6e—Supplies: Enter the total costs of all tangible expendable personal property (supplies) other than those included on line 6d.

Line 6f—Contractual: Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and, (2) contracts with secondary recipient organizations including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line.

Justification: Attach a list of contractors indicating the name of the organization, the purpose of the contract, and the estimated dollar amount. If the name of the contractor, scope of work, and estimated costs are not available or have not been negotiated, indicate when this information will be available. Whenever the applicant/grantee intends to delegate all or part of the project work to another agency, the applicant/grantee must provide a completed copy of Section B, Budget Categories for each contractor, along with supporting information.

Line 6g—Construction: Leave blank since new construction is not allowable and Federal funds are rarely used for either renovation or repair.

Line 6h—Other: Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to: insurance, medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs; and staff development costs.

Line 6i—Total Direct Charges: Show the totals of Lines 6a through 6h.

Line 6j—Indirect Charges: Enter the total amount of indirect charges (costs), if any. If no indirect costs are requested, enter "none." Indirect charges may be requested if: (1) The applicant has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency; or (2) the applicant is a State or local government agency. If the applicant does not have an negotiated indirect cost rate agreement, the applicant may request it in accordance with Department of Health and Human Services procedures.

Applicants other than State and local governments are requested to enclose a copy of this agreement. Local and State governments should enter the amount of indirect costs determined in accordance with HHS requirements. When indirect charges are requested, these costs are included in the indirect cost pool only and should not be also charged as direct costs to the grant.

Line 6k—Total: Enter the total amounts of Lines 6i and 6j.

Line 7—Program Income: Estimate the amount of income, if any, expected to be generated from this project. Describe the source and expected use of income in the Level of Effort section of the Program Narrative.

Section C—Non-Federal Resources

Line 12—Totals: Enter amounts of non-Federal resources that will be used in carrying out the proposed project. If third-party in-kind contributions are included, provide a brief explanation in the budget justification section.

Section D—Forecasted Cash Needs

Not applicable.

Section E—Budget Estimate Federal Funds Needed for Balance of the Project

Line 20—Totals: Enter the estimated required *Federal* funds (exclude estimates of the amount of cost sharing) for the period covering months 13 through 24 under column "(b) First;" and for months 25 through 36 under "(c) Second."

Section F—Other Budget Information

Line 21—Direct Charges: Not applicable

Line 22—Indirect Charges: Enter the type of indirect rate (provisional, predetermined, final or fixed) to be in effect during the funding period, the base to which the rate is applied, and the total indirect costs.

Line 23—Remarks: Provide any other explanations or comments deemed necessary.

3. SF 424B—Assurances

SF 424B, Assurances—Non-Construction Programs, contains assurances required of applicants under Older Americans Act programs. Please note that a duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances.

With the possible exception of an Assurance of Protection of Human Subjects, no other assurances are required. For research components of the Institute's proposed activities, in which human subjects may be at risk, an Assurance of Protection of Human Subjects may be needed. If there is a question regarding the applicability of this assurance, contact the Office of Research Risks of the National Institutes of Health at (301) 496–7041.

4. Certification Forms

Certifications are required of the applicant regarding (a) lobbying; (b) debarment, suspension, and other responsibility matters; and (c) drug-free workplace requirements. Please note that a duly authorized representative of the applicant organization must attest to the applicant's compliance with these certifications.

5. Summary Description of the Proposed Institute

On a separate page, provide an Institute summary description headed by two identifers: (1) The name of the applicant organization as shown in SF 424, item 5 and (2) the title of the proposed Institute as shown in SF 424, item 11. Please limit the summary description to a maximum of 1,200 characters, including words, spaces and punctuation.

The description should be specific and succinct. It should outline the objectives of the Institute, the approaches to be used, and the outcomes expected. The Institute summary description, together with the information on the SF 424, comprise and "abstract" which is entered into AoA's computer data base. The summary description provides the reviewer with an introduction to the substantive parts of the application. Therefore, care should be taken to produce a summary which accurately and concisely reflects the functions and activities of the proposed Institute.

6. Program Narrative

The Program Narrative is the most important part of the application. It should be clear, concise, and pertinent to the functions, activities, and issue areas of the particular Institute under

which the application is being submitted. In describing the proposed Institute, make certain that you respond fully to the evaluation criteria set forth in Section F above. The format of the narrative should, in fact, parallel the criteria, beginning with a discussion of (a) the Institute's objectives and the need for assistance; leading to an account of (b) the results/benefits the Institute expects to accomplish; followed by a detailed explanation of (c) the approach(es) the Institute would take to achieve its objectives; and ending with (d) the level of effort the Institute would undertake, in terms of staff, funding, and other resources.

Please have the narrative typed on one side of 8½" x 11" plain white paper with 1" margins on both sides. All pages of the narrative (including charts, tables, maps, exhibits, etc.) should be sequentially numbered, beginning with "Objectives and Need for Assistance" as page number one. (Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement).

The narrative should conclude by identifying the author(s) of the proposal, their relationship with the applicant, and the role they will play, if any, should the project be funded.

7. Organizational Capability Statement and Vitae for Key Institute Personnel

An organizational capability statement should be included. The statement should describe how the applicant agency, or the designated organizational unit, is organized, the nature and scope of its work, and its capabilities relevant to the proposed work of the Institute. This description should cover capabilities of the applicant not included in the program narrative. It may include descriptions of any current or previous relevant experience and describe the competence of the proposed Institute personnel. An organization chart showing the relationships between the Institute and the applicant organization should be included.

Vitae should be included for key Institute staff only.

K. Checklist for a Complete Application

The checklist below should be typed on 8½" x 11" plain white paper, completed and included in your application package. It is for use in ensuring proper preparation of your application.

Checklist

I have checked my application package to ensure that it includes or is in accord with the following:

____ One original application plus two copies, each stapled securely (no folders or binders) with the SF 424 as the first page of each copy of the application;

____ SF 424; SF 424A—Budget Information (and accompanying budget justification); SF 424B—Assurances; and Certifications;

____ SF 424 has been completed according to the instructions, signed and dated by an authorized official (item 18);

____ As necessary, a copy of the current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency;

____ Proof of nonprofit status, as necessary;

____ Summary description;

____ Program narrative;

____ Organizational capability statement;

____ Vitae for key personnel;

____ Letters of commitment and cooperation, as appropriate.

L. Points to Remember

1. There is a sixty (60) double-spaced page limitation for the substantive parts of the application. Before submitting your application, please check that you have adhered to this requirement which is spelled out in Section D.

2. You are required to send an original and two copies of an application.

3. The summary description (1,200 characters or less) should accurately reflect the nature and scope of the proposed Institute.

4. To meet the cost-sharing requirement (see section C above), you must, at a minimum, match $1 for every $3 requested in Federal funding to reach the threshold of 25% of total project costs (the Federal share plus the non-Federal share of the Institute's cost). For example, if your request for Federal funds is $250,000, then the required minimum match or cost sharing is $83,333. The total project cost is $333,333, of which your $83,333 share is 25%.

5. In following the required format for preparing the program narrative, make certain that you have responded fully to the four (4) evaluative criteria which will be used by reviewers to evaluate and score all applications.

6. Do *not* include letters which endorse the proposed Institute in general and perfunctory terms. In contrast, letters which describe and verify tangible commitments to the Institute, e.g., funds, staff, space, should be included.

7. If more than one application is submitted, each should be submitted under separate cover.

8. Before submitting the application, have someone other than the author(s): (1) apply the screening requirements to make sure you are in compliance; and (2) carry out a trial run review based upon the evaluative criteria. Take the opportunity to consider the results of the trial run and then make whatever changes you deem appropriate.

9. Applications must be mailed by midnight, or hand delivered (by 5:30 p.m., eastern time), no later than June 28, 1991 to: Department of Health and Human Services, Grants and Contracts Management Division, Acquisition and Assistance Management Branch, 200 Independence Avenue, SW., room 341–F, Washington, DC 20201, Attn: AoA–91–2.

Joyce T. Berry,

U.S. Commissioner on Aging, Administration on Aging.

BILLING CODE 4130–01–M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☒ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier: Not Applicable (N/A)
	3. DATE RECEIVED BY STATE: N/A	State Application Identifier: N/A
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify): _____

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration

D. Decrease Duration Other (specify): _____

9. NAME OF FEDERAL AGENCY: Administration on Aging

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 93.668

TITLE: Special Programs for the Aging-Title IV

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☒ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

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OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1. N.A.	N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.
2. N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
3. N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
4. N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
5. TOTALS	13.668	$ N.A.	$ N.A.	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$ N.A.	$ N.A.	$ N.A.	$ N.A.	$
b. Fringe Benefits	N.A.	N.A.	N.A.	N.A.	
c. Travel	N.A.	N.A.	N.A.	N.A.	
d. Equipment	N.A.	N.A.	N.A.	N.A.	
e. Supplies	N.A.	N.A.	N.A.	N.A.	
f. Contractual	N.A.	N.A.	N.A.	N.A.	
g. Construction	N.A.	N.A.	N.A.	N.A.	N.A.
h. Other	N.A.	N.A.	N.A.	N.A.	
i. Total Direct Charges (sum of 6a - 6h)	N.A.	N.A.	N.A.	N.A.	
j. Indirect Charges	N.A.	N.A.	N.A.	N.A.	
k. TOTALS (sum of 6i and 6j)	$ N.A.	$ N.A.	$ N.A.	$ N.A.	$
7. Program Income	$ N.A.	$ N.A.	$ N.A.	$ N.A.	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program		(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.
9.	N.A.	N.A.	N.A.	N.A.	N.A.
10.	N.A.	N.A.	N.A.	N.A.	N.A.
11.	N.A.	N.A.	N.A.	N.A.	N.A.
12. TOTALS (sum of lines 8 and 11)		$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.
14. NonFederal	N.A.	N.A.	N.A.	N.A.	N.A.
15. TOTAL (sum of lines 13 and 14)	$ N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program		FUTURE FUNDING PERIODS (Years)			
		(b) First	(c) Second	(d) Third	(e) Fourth
16.	N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.
17.	N.A.	N.A.	N.A.	N.A.	N.A.
18.	N.A.	N.A.	N.A.	N.A.	N.A.
19.	N.A.	N.A.	N.A.	N.A.	N.A.
20. TOTALS (sum of lines 16 -19)		$	$	$ N.A.	$ N.A.

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
N.A.	

23. Remarks

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OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED: April 29, 1991	Applicant Identifier: Not Applicable (N/A)
3. DATE RECEIVED BY STATE: N/A	State Application Identifier: N/A
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:
Application: ☐ Construction ☒ Non-Construction
Preapplication: ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name: XYZ Organization

Organizational Unit: Division on Aging

Address (give city, county, state, and zip code):
1234 Smith Street
Jonesburg, Iowa 54321

Name and telephone number of the person to be contacted on matters involving this application (give area code)
Jane Doe
(234) 567-8901

6. EMPLOYER IDENTIFICATION NUMBER (EIN): 9 8 – 7 6 5 4 3 2 1

7. TYPE OF APPLICANT: (enter appropriate letter in box) N
A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify)

8. TYPE OF APPLICATION:
☒ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:
Administration on Aging

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 9 3 . 6 6 8
TITLE: Special Programs for the Aging-Title IV

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
National Eldercare Institute on ...

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):
N/A

13. PROPOSED PROJECT:
Start Date: 09/01/91
Ending Date: 08/31/94

14. CONGRESSIONAL DISTRICTS OF:
a. Applicant: 3
b. Project: 1-7

15. ESTIMATED FUNDING:

a. Federal	$ 250,000 .00
b. Applicant	$ 83,333 .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ 333,333 .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO. ☒ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☒ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative: Richard Roe	b. Title: Executive Director	c. Telephone number: (444) 555-6666
d. Signature of Authorized Representative		e. Date Signed: 04/28/91

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BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1. N.A.	N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.
2. N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
3. N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
4. N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
5. TOTALS	93.668	$ N.A.	$ N.A.	$ 250,000	$ 83,333	$ 333,333

SECTION B – BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$ N.A.	$ N.A.	$ N.A.	$ N.A.	$ 200,000
b. Fringe Benefits	N.A.	N.A.	N.A.	N.A.	30,000
c. Travel	N.A.	N.A.	N.A.	N.A.	10,000
d. Equipment	N.A.	N.A.	N.A.	N.A.	5,000
e. Supplies	N.A.	N.A.	N.A.	N.A.	3,333
f. Contractual	N.A.	N.A.	N.A.	N.A.	15,000
g. Construction	N.A.	N.A.	N.A.	N.A.	N.A.
h. Other	N.A.	N.A.	N.A.	N.A.	30,000
i. Total Direct Charges (sum of 6a - 6h)	N.A.	N.A.	N.A.	N.A.	293,333
j. Indirect Charges	N.A.	N.A.	N.A.	N.A.	40,000
k. TOTALS (sum of 6i and 6j)	$ N.A.	$ N.A.	$ N.A.	$ N.A.	$ 333,333
7. Program Income	$ N.A.	$ N.A.	$ N.A.	$ N.A.	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8. N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.
9. N.A.	N.A.	N.A.	N.A.	N.A.
10. N.A.	N.A.	N.A.	N.A.	N.A.
11. N.A.	N.A.	N.A.	N.A.	N.A.
12. TOTALS (sum of lines 8 and 11)	$ 83,333	$	$	$ 83,333

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.
14. NonFederal	N.A.	N.A.	N.A.	N.A.	N.A.
15. TOTAL (sum of lines 13 and 14)	$ N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16. N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.
17. N.A.	N.A.	N.A.	N.A.	N.A.
18. N.A.	N.A.	N.A.	N.A.	N.A.
19. N.A.	N.A.	N.A.	N.A.	N.A.
20. TOTALS (sum of lines 16-19)	$ 300,000	$ 300,000	$ N.A.	$ N.A.

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
N.A.	

23. Remarks

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ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____

Organization

_____

Authorized Signature Title Date

NOTE: If Disclosure Forms are required, please contact: Mr. William Sexton, Deputy Director, Grants and Contracts Management Division, Room 341F, HHH Building, 200 Independence Avenue, SW, Washington, D.C. 20201-0001

Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State of local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services(HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transaction. " provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions
(To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(Continued on reverse side of this sheet)

HHS--Certification Regarding Drug-Free Workplace Requirements--continued from reverse page

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

Signature_____ **Date**_____

Title_____

Organization_____

DGMO Form#2 Revised May 1990

[FR Doc. 91-10013 Filed 4-26-91; 8:45 am]

BILLING CODE 4130-01-C

Alcohol, Drug Abuse, and Mental Health Administration

Grant to the National Coalition for the Mentally Ill in the Criminal Justice System

OFFICES: Office for Treatment Improvement, National Institute of Mental Health, National Institute on Drug Abuse, HHS.

ACTION: Grant to support national activities concerning the mentally ill in the criminal justice systems.

SUMMARY: This notice is to provide information to the public concerning a planned grant from the Office for Treatment Improvement/ADAMHA to the National Coalition for the Mentally Ill in the Criminal Justice System (National Coalition). This is not a formal request for applications. Assistance will be provided only to the National Coalition.

Authority: The grant will be made under authority of section 301 of the Public Health Service Act, as amended, 42 U.S.C. 241. This grant is the appropriate mechanism to fund this activity since it is our intent to provide support for a public purpose and agency involvement in the actual conduct of the activity is not required. The grant is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Findings: Previous research shows that mentally ill offenders show a high degree of comorbidity (combined mental health and substance abuse disorders). One of the critical issues to be dealt with in this project is the screening and diagnosis of this comorbid population in correctional settings. Because of the comorbidity issue, funding is being provided by three ADAMHA components.

This grant will fund two distinct activities:

(1) A national Work Session on Mental Illness in the Juvenile Justice System, to be attended by 50 representatives of national organizations, experts, and practitioners representing a variety of disciplines—juvenile corrections, juvenile court judges, adolescent treatment providers, legislative leaders, and Federal agencies involved in mental health, juvenile justice, and drug treatment; and

(2) A national capacity building project to provide information packages and technical assistance to the states on topics related to the mentally ill in the criminal justice system.

Reasons for Selecting the National Coalition as Recipient of This Grant

The National Coalition for the Mentally Ill in the Criminal Justice System is a unique non-profit organization created to deal with a growing national crisis—the increasing numbers of mentally ill offenders held by criminal justice agencies. It is the only organization that has developed a national agenda to work with this underserved population. Organized in June, 1989, National Coalition members have been working to collect information and educate a wide range of policy makers in criminal justice, mental health, and State, local and Federal governments about the needs of the mentally ill offender. The National Coalition is an outgrowth of a Washington State organization established three years earlier, Community Action for the Mentally Ill Offender. The National Coalition has close ties to the National Alliance for the Mentally Ill, the largest national organization dealing with public education on mental illness.

Moreover, the National Coalition has formed a working partnership with the Human Interaction Research Institute to manage the Coalition's long-range workplan. The human Interaction Research Institute is a thirty year old non-profit center for research, policy studies and program development on health issues based in Los Angeles, California. Of the 70 projects completed by the Research Institute since 1961, many empirical studies and field interventions have been completed in both the mental health and criminal justice fields.

In conclusion, the National Coalition has undertaken a mission that is not performed by any other national organization. That mission is to develop national models for screening, diverting and treating mentally ill offenders, and to implement the models in at least five states. The mission is based on the supposition that proper screening and handling of the mentally ill offender by criminal justice agencies is a national problem that has substantial public safety, public health, econmomic and moral implications, not only for criminal justice agencies but for every level of government. Three specific offender groups have been targeted as priorities: the mentally ill in local jails; the mentally ill juvenile offender; and the mentally ill in prison.

The National Coalition is operating under a four-year plan, the Capacity Building Project (1991–1995). Pursuant to the plan, five tasks will be performed: National needs assessment; developing information packages; a national clearinghouse; State technical assistance (capacity building); and a policy and planning study.

The current grant will be divided equally between a national workshop, and staffing for the capacity building effort. A national Work Session on Mentally Ill in the Juvenile Justice System will be developed in 1991, along the lines of the successful 1990 Work Session on the Mentally Ill in Jails.

Availability of Funds

Approximately $200,000 will be available in Fiscal Year 1991 to fund this project. It is expected that the grant will begin in May, 1991, and will be funded for at least a 12-month period. Based on the results of this initial funding period additional funding may be provided.

The Office for Treatment Improvement will administer the grant, and coordinate with representatives of NIMH and NIDA in the oversight and evaluation of grant activities.

FOR FURTHER INFORMATION CONTACT: Nicholas L. Demos, J.D., OTI/ADAMHA, Rockwall II, 10th floor, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone (301) 443–6533.

(The Catalog of Federal Domestic Assistance number for this program is 93.903.)

Dated: April 23, 1991.

Joseph R. Leone,

Associate Administrator for Management, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 91–10021 Filed 4–26–91; 8:45 am]

BILLING CODE 4160–20–M

Family Support Administration

Parents' Fair Share (PFS) Demonstration; Invitation Letter to Governors to Participate in PFS Demonstration

AGENCY: Family Support Administration, HHS.

ACTION: Public information copy of letter to governors.

SUMMARY: A letter has been sent by the Secretary of Health and Human Services and the Secretary of Labor to the nation's governors inviting them to apply to participate in the Parents' Fair Share (PFS) Demonstration. The Parents' Fair Share Demonstration will be coordinated with a provision in the Social Security Act (section 482(s)(3)) as amended by the Family Support Act of 1988 (Pub. L. 100–485) which calls for the Secretary of Health and Human Services to allow up to five states to provide Job Opportunities and Basic Skills Training (JOBS) program services to unemployed noncustodial parents of children receiving AFDC. If a state indicates an interest in applying to participate in the

PFS demonstration, with the approval of the governor's office or its designate, it will be sent an application package and will be invited to an information meeting.

FOR FURTHER INFORMATION CONTACT: Mark Fucello, Family Support Administration/OPE, 370 L'Enfant Promenade, SW., Washington, DC., 20447; telephone (202) 401–4538.

SUPPLEMENTARY INFORMATION: The Parents' Fair Share (PFS) Demonstration is the product of a unique public/private partnership that includes the U.S. Department of Health and Human Services, the U.S. Department of Labor, the Pew Charitable Trusts, and the AT&T Foundation, the Ford Foundation and the Manpower Demonstration Research Corporation. A state that wishes to participate in the PFS demonstration and receive private foundation grants will be asked to apply to this consortium. States that wish to be permitted to provide JOBS services to unemployed noncustodial parents whose children receive Aid to Families with Dependent Children under section 482(d)(3) of the Social Security Act may apply to the Secretary of Health and Human Services. PFS demonstration sites will be given preference by the Secretary of HHS in his selection of states permitted to use JOBS funds in this manner. The following materials regarding the PFS demonstration are provided for the general information of the public.

Dear Governor _____: Many children live in poverty, in part because their disadvantaged, absent fathers are either unable or unwilling to support them. A major demonstration project is being mounted to address these problems by attempting to improve the earnings of disadvantaged men, the effectiveness of the child support enforcement system, and the financial well-being of poor children. We invite the State/Commonwealth of _____ to apply to join the demonstration.

The Parents' Fair Share Demonstration will help fulfill the vision of parental support of children underlying the Family Support Act of 1988 (FSA). It will offer employment, education, and other services to unemployed noncustodial parents (usually fathers) of children receiving Aid to Families with Dependent Children (AFDC) so that they may be able to get stable employment and meet their child support obligations. The project will also include services designed to resolve conflicts between the parents, and to help participants understand the rights and responsibilities associated with fatherhood. This initiative, along with improved child support enforcement efforts and new employment services for AFDC custodial parents authorized by FSA, represents a multi-pronged strategy to attack poverty among children living in single-parent households.

The demonstration is the product of a unique public/private partnership including the U.S. Department of Health and Human Services (HHS), the U.S. Department of Labor (DOL), the Pew Charitable Trusts, the Ford Foundation, and the Manpower Demonstration Research Corporation (MDRC), a nonprofit research and demonstration organization. It builds upon an FSA provision authorizing the Secretary of HHS to grant waivers to five states so they can serve unemplcyed noncustodial parents under the Job Opportunities and Basic Skills Training (JOBS) Program for AFDC recipients, and DOL interest in encouraging Job Training Partnership Act (JTPA) service providers to serve disadvantaged men with child support obligations. Participating states will receive matching grants and enhanced federal funding during all phases of the project, along with expert technical assistance in designing and implementing the program.

Enclosed are descriptive materials on the demonstration that seek general information about your state's interest. We hope you and your staff (copies of this letter have been mailed to state human service officials) will signal your desire to learn more about this innovative demonstration and consider applying to participate in the demonstration.

Sincerely,

Louis W. Sullivan, M.D.,

Secretary of Health and Human Services.

Lynn Martin,

Secretary of Labor.

Manpower Demonstration Research Corporation

The Parents' Fair Share Demonstration—Background Paper

Overview

Parents' Fair Share (PFS) is the name of a challenging new demonstration project for unemployed absent parents (usually fathers) of poor children who owe child support but are not paying it, at least officially. The project's central goals are to reduce poverty among children receiving Aid to Families with Dependent Children (AFDC), to encourage and require their fathers to establish paternity and pay child support, to increase the earnings of absent fathers who are unemployed and unable to adequately support their children, and to assist them in providing other forms of support to their children when appropriate. This effort is the product of a unique public/private partnership that includes the U.S. Department of Health and Human Services, the U.S. Department of Labor, the Pew Charitable Trusts, the Ford Foundation, and the Manpower Demonstration Research Corporation (MDRC).

The web of problems confronting poor children includes an increasing probability of living in a single-parent household, deepening poverty among these households and a worsening economic position of many of the absent fathers, especially young men with limited education and skills. Disadvantaged men's earnings have declined steadily throughout the 1970's and 1980's, even while efforts to increase child support collections have increased.

The PFS demonstration seeks to address the interrelationships among these problems. It poses four central challenges: First, what combination of services would yield increased earnings for disadvantaged men? Second, can these services be delivered as an integral part of the child support enforcement system? Third, if absent parents improve their earnings position, will they support their children? And fourth, will children be better off financially or emotionally?

States choosing to apply to participate in the Parents' Fair Share demonstration may also apply to the Secretary of Health and Human Services to be permitted to provide JOBS services to unemployed noncustodial parents whose children receive Aid to Families with Dependent Children (AFDC) under section 482(d)(3) of the Social Security Act. PFS demonstration sites will be given preference by the Secretary of HHS in his selection of states permitted to use JOBS funds in this manner. An 1115 waiver may be granted as well by the Secretary of HHS for some aspects of the demonstration. Participating states will receive some modest funding from the demonstration partners, and will be expected to contribute state or local funding to the project. Funds provided by state sources (plus those provided by the demonstration funding consortium) will generally be matchable by the federal government under existing programs, including Child Support and JOBS. States are encouraged to use other funds as well, including Job Training Partnership Act (JTPA), Food Stamp Work and Training and education funds. However, federal dollars, such as JTPA funds, would not be matchable. In addition, participating states will be eligible for technical assistance provided by a team of MDRC assembled experts in child support policy, employment and training, welfare reform, and other areas.

Demonstration programs will not be expected to follow a uniform design. Instead, the sponsoring foundation and public consortium members will encourage states to meet some general requirements, such as the establishment of linkages and cooperation among the agencies the state proposes to involve

(examples might include child support, judicial, welfare and JTPA employment and training agencies), and the provision of services in several key areas including:

- Employment and training,
- Child support enforcement and/or paternity establishment,
- Mediation, and
- Parental rights and responsibilities.

States are free to vary the emphasis they place on these components, to propose additions, and to design programs that represent a range of possible options. For example, the consortium hopes to select some "late intervention" programs that work primarily with noncustodial parents for whom paternity has been established and who are required to participate in lieu of legal action. These mandatory programs would be expected to intervene when a noncustodial father appears before the courts, either because of failure to pay child support or when an order is established and the noncustodial parent informs the court he cannot pay because he is unemployed.

The consortium also hopes to select some "early intervention" programs that attempt to recruit volunteers who have not yet established paternity. Ultimately, paternity establishment will be necessary in order for volunteers to participate in the full range of programmatic activities. The voluntary programs will conduct outreach and recruitment at hospitals, JTPA programs and possibly even pre-natal clinics. Some state applicants may wish to operate both early and late intervention programs together, offering the same services to both groups of noncustodial parents or offering a richer array of services and incentives to "early" volunteers. It is also anticipated that the lead state agency responsible for administering the programs will vary among applicants.

MDRC will be responsible for coordinating the demonstration, and will carry out the evaluation with funds provided by the demonstration partners. The other partners, including the Secretary of HHS, will select the sites, set project policy, and provide overall guidance. The demonstration will be conducted in five states for up to two years on a pilot basis, currently scheduled to begin in the fall of 1991. States would be expected to work with MDRC to collect baseline and program participation data. MDRC will prepare reports describing noncustodial fathers, their participation in the child support process, employment and training, parental responsibility and meditation activities and other aspects of the demonstration as well as outcome data involving employment and earnings, paternity establishment and child support payments. The demonstration would be extended for several more years if the pilot experience indicates the potential value of expanding the evaluation so that a full-scale experimental design could be used to determine program impacts and benefits and costs for the participants and the agencies providing services.

Benefits to Participating Programs

States that are selected to participate in the demonstration will be given priority by the Secretary of HHS in the selection of those that are permitted to use JOBS funds to serve noncustodial parents, will be eligible for other waivers if necessary, and will be among the first to test the viability of this expanded set of services for improving the employment and earnings of noncustodial parents who are unemployed and owe child support. The following additional benefits will also accrue to participating states:

- The demonstration offers the possibility of increasing paternity establishment and child support collections in the jurisdictions in which it operates.
- Participating states will have the opportunity to meet and share information and innovative ideas.
- MDRC will provide technical assistance and training in the major program components and in organizational linkages, welfare reform, and program design.
- Demonstration funds will be provided to participating states to help offset the costs of operating the program.
- States can break new ground in helping to learn what works for disadvantaged men, and in learning about ways to link job training, mediation and other services designed to overcome some of the most prominent obstacles offered by absent fathers for the failure to establish paternity and pay child support.
- States have the opportunity to influence national policy development.
- The program will be evaluated at virtually no cost to the participating states.

Selection Process

States interested in participating in the PFS demonstration and in using JOBS funds to serve the demonstration participants are encouraged to complete and submit applications to HHS. After recording receipt of the applications, HHS will forward copies of the PFS applications to MDRC for the consortium's review and will retain and review the federal applications for waivers. The demonstration states will be chosen through a competitive selection process.

As a first step, each interested state should designate a contact person for future correspondence with HHS and MDRC. This individual should represent either the funding agency (the IV–A agency from which JOBS funds and any waiver requests must originate), the lead state agency that will be responsible for the administration of the program (e.g., JTPA or Child Support Enforcement), or the Governor's Office. Participation in the demonstration will require extensive collaboration among these and other agencies. We urge interested states to establish mechanisms for coordination among the various agencies involved as soon as possible.

It is anticipated that all or most of the programs will operate in selected jurisdictions or regions of states, rather than statewide. In many states, existing programs operated at the local level by courts, community-based organizations, JTPA agencies, or others are currently offering services that could be part of Parents' Fair Share. States are encouraged to identify, coordinate with, and ultimately propose such existing programs, as part of the demonstration, if they can be adapted to a program structure that fits the demonstration guidelines. MDRC staff have information about programs currently operating in several states, and will be available to share this data with interested state officials. The consortium also encourages promising local programs to contact state officials to develop collaborative strategies.

Funding

The five states selected to participate in the Parents' Fair Share demonstration will receive foundation grants of up to $100,000 each to help offset the cost of planning, assisting MDRC in data collection, and for operating the program. These funds will be matchable under IV–D authority (the Child Support Enforcement program) to the extent they are used for administrative activities related to the operation of the program and under IV–F (JOBS) authority to the extent they are used to provide actual employment and training and related services. States will receive $10,000 upon selection and $40,000 at the start of program operations and $50,000 after six months of operations. Selected states will be asked to provide a like amount to the project and to develop program plans and budgets that would build to a capacity to actively serve at least 300 participants during the course of a year.

So for example, a "late intervention" program might have to refer 1,000 absent fathers for services with the expectation that approximately one-third will fail to show, one-third will find jobs before services begin, and one-third will participate actively.

Next Steps and Schedule

States are invited to send representatives to a Parents' Fair Share Information Meeting, hosted by the funding partners. Between one and three of these public meetings will be held beginning in mid-June. These one-day information meetings will cover all aspects of the demonstration including timetables, program requirements, waivers, and funding. State representatives should feel free to offer comments or suggestions on the demonstration plans, and to ask questions about the application process at these meetings. Interested states are asked to complete the enclosed state profile, which seeks some general background information about early plans for the demonstration so that MDRC can plan productive meetings and be prepared to respond to states' questions. The dates and sites for the meetings will be set after responses to the state profile are reviewed. States are asked to complete section I, which indicates the state's intention to participate in the information meeting, and mail this to MDRC no later than May 24, 1991. Completing the state profile is voluntary.

States that express interest will receive an Application Packet to apply to be part of the Parents' Fair Share Demonstration and standard federal forms to be completed by any state wishing to use JOBS funds to serve unemployed noncustodial parents. Completed applications for the demonstration are due August 16, 1991. MDRC will review the applications obtaining further information through site visits and telephone conversations. MDRC will then assemble this information and make recommendations to the consortium for the selection of foundation grant recipients and to HHS for the selection of waiver recipients. The Secretary of HHS will announce the selections in the fall. We strongly encourage you to consider participating in this pathbreaking project.

Parents' Fair Share Demonstration

Tentative Site Selection Process and Timetable

April 12 Governors sent a letter signed by the Secretaries of HHS and Labor soliciting their interest in the Parents' Fair Share Demonstration and inviting them to send a representative to an Information Meeting and requesting the name of a contact person.

April 26–May 24 MDRC will telephone contact people in all states that respond to the letter to answer questions and provide updated information. Application packets will be mailed to all states that express interest. These packets will include guidelines for completing applications and standard federal forms for applying for the HHS waiver.

May 24 Responses due to MDRC regarding attendance at the Information Meeting(s).

June 17–June 28 Between one and three regional Information Meeting(s) open to the public hosted by MDRC, HHS, and DOL. Application packets will be available for any party who did not receive one prior to the meeting. First meeting scheduled for June 17 in Washington, DC. Others will be arranged as appropriate.

July 1–August 16 Applications should be forwarded to HHS including, as appropriate, letters from the following agencies pledging cooperation: courts, JTPA, JOBS agency, and the child support enforcement agency.

July 1–October 15 Review process, including telephone interviews and site visits. MDRC will present information from the visits and other sources to the funding partners and to the Secretary of HHS for final decisions.

Fall 1991 Selections announced.

Dated: April 22, 1991.

Jo Anne B. Barnhart,

Assistant Secretary for Family Support.

[FR Doc. 91–9988 Filed 4–26–91; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974—Revision of Systems of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to revise two notices describing records maintained by the Office of Administrative Services in the Office of the Secretary. Except as noted below, all changes being published are editorial in nature, and reflect organization, address, and other miscellaneous administrative revisions which have ocurred since the previous publications of the material in the **Federal Register**. The two notices being revised, which are published in their entirety below, are:

1. "Library Circulation Control System—Interior, Office of the Secretary—35," (previously published in the **Federal Register** on May 27, 1981; 46 FR 28519).

2. "Secretarial Subject Files—Interior, Office of the Secretary—46," (previously published in the **Federal Register** on July 15, 1986; 51 FR 25611).

In one notice (OS–35), the existing routine disclosure statement is revised to include the release (1) to a congressional office in response to an inquiry the individual has made to the congressional office; and (2) to Federal, State, tribal, territorial, or local agencies that have requested information necessary or relevant for personnel actions. Also in OS–35, the storage statement is revised to reflect that the records are maintained in a computer data file. This reflects a change from the prior manual record file, however this change does not create a greater access to the records in the system. Since these changes do not involve any significant new or intended use of the information in the systems of records, the two notices shall be effective upon publication in the **Federal Register** (April 29, 1991). Additional information regarding these revisions may be obtained from the Department Privacy Act Officer, Office of the Secretary (PMI), Room 2242, Main Interior Building, U.S. Department of the Interior, Washington, DC 20240.

Dated: April 18, 1991.

Oscar W. Mueller, Jr.,

Director, Office of Management Improvement.

INTERIOR/OS—35

SYSTEM NAME:

Library Circulation Control System—Interior, Office of the Secretary—35.

SYSTEM LOCATION:

Natural Resources Library, U.S. Department of the Interior, 1849 C Street, NW., Washington, DC 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Borrowers of library materials from Department of the Interior library.

CATEGORIES OF RECORDS IN THE SYSTEM:

Borrowers' name and working address; book call number, due date, and book information; telephone number and ID number; and affiliation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

43 U.S.C. 67a, 1456, 1467, 40 U.S.C. 483(b), 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The primary use of the records is control of library materials.

Disclosure outside the Department of the Interior may be made: (1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when, (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the Government, an employee of the Department is a party to litigation or anticipated litgation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) to a cogressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (3) to Federal, State, tribal, territorial, or local agencies that have requested information necessary or relevant to the hiring, firing, or retention of an employee, or the issuance of a security clearance, contract, license, grant or other benefit; and (4) to appropriate Federal, State, tribal, territorial, local, or foreign agencies responsible for investigating or prosecuting the violation of, or for enforcing, implementing, or administering a statute, rule, regulation, program, facility, order, lease, license, contract, grant, or other agreement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in computer data files.

RETRIEVABILITY:

Retrievable by name of individuals, patron ID number, book call number, due date, and other book information.

SAFEGUARDS:

Records are maintained in computer files, and are accessible only by authorized persons. The records are attended constantly during working hours with library locked after work hours.

RETENTION AND DISPOSAL:

Records are maintained for the current year plus one and disposed of in accordance with disposition instructions contained in the Office of the Secretary Administrative Handbook Number 7.

SYSTEM MANAGER AND ADDRESS:

Library Contractor COTR, Office of Administrative Services, Division of General Services, Department of the Interior, 1849 C Street, NW., Washington, DC 20240.

NOTIFICATION PROCEDURE:

Inquiries regarding the existence of records shall be addressed to the System Manager with respect to records located in the library. A written and signed request stating that the requester seeks information concerning records pertaining to him/her is required. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access may be addressed to the System Manager, with respect to records located in the library. The request must be in writing and be signed by the requester. The request must meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment shall be addressed to the System Manager and must meet the requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individuals using library services.

INTERIOR/OS-46

SYSTEM NAME:

Secretarial Subject Files—Interior, Office of the Secretary—46.

SYSTEM LOCATION:

Office of the Secretary, Office of Administrative Services (PMO), Division of General Services, U.S. Department of the Interior, 1849 C St., NW., Washington, D.C. 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Those who have had correspondence with the Secretary, Under Secretary, Assistant Secretaries, Deputy Assistant Secretaries, and individuals acting in these capacities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Index cards containing the name, dates, and subject codes for retrieval of subject files, subject files of correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 43, U.S.C. 1457, 44 U.S.C. 3101, Reorganization Plan 3 of 1950.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records are to support the operational, program and policy decisions of the Secretary of the Interior, Under Secretary, Assistant Secretaries, and Deputy Assistant Secretaries. Disclosures outside the department are (1) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determine that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled, (2) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license, and (3) to a congressional office from the record of an individual in response to an unquiry made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

3" x 5" index cards; correspondence filed in folders.

RETRIEVABILITY:

Indexed by subject, date, and name.

SAFEGUARDS:

Stored in locked office and locked file cabinets.

RETENTION AND DISPOSAL:

Retained and diposed of in accordance with the Office of the Secretary Comprehensive Records Disposal Schedule K-1.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Branch of Paperwork Management, Division of General Services (PMO), Office of Administrative Services, U.S. Department of the Interior, 1849 C St., NW., Washington, D.C. 20240.

NOTIFICATION PROCEDURE:

A written and signed request stating that the requester seeks information

concerning records pertaining to him/her. See 43 CFR 2.60.

RECORD ACCESS PROCEDURE:

Submit requests to the System Manager. The request must be in writing, signed by the requester, and meet the requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment shall be addressed to the System Manager and must meet the requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Correspondence or documents signed at the Secretarial level.

[FR Doc. 91-9975 Filed 4-26-91; 8:45 am]

BILLING CODE 4310-RK

Bureau of land management

[AK-964-4230-15; F-72913]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(h)(8) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(8), will be issued to Bering Straits Native Corporation for approximately 6,901 acres. The lands involved are in the vicinity of Mount Distin, Alaska, within T. 8S., R. 33 W., Kateel River Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Nome Nugget. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until May 29, 1991, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Carolyn A. Bailey,

Lead Land Law Examiner, Branch of Doyon/Northwest Adjudication.

[FR Doc. 91-9984 Filed 4-26-91; 8:45 am]

BILLING CODE 4310-JA-M

Bureau of Land Management

[AK-(964)-4230-15; F-14857-A]

Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(f), will be issued to Gwitchyaazhee Corporation for approximately 82 acres. The lands involved are in the vicinity of Fort Yukon, Alaska.

Certain lands within:

Secs. 7 and 8, T. 20 N., R. 12 E., Fairbanks Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until May 29, 1991, to file an appeal. However, parties receiving sevice by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address indentified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Frances J. Reed,

Lead Land Law Examiner, Branch of Doyon/Northwest Adjudication.

[FR Doc. 91-9983 Filed 4-26-91; 8:45 am]

BILLING CODE 4310-JA-M

[CO-010-01-4320-02]

Craig Colorado Advisory Council Meeting

TIME AND DATE: June 12, 1991 10 a.m.

PLACE: BLM—Craig District Office, 455 Emerson Street, Craig, Colorado 81625.

STATUS: Open to public; interested persons may make oral statements at 10:30 a.m. Summary minutes of the meeting will be maintained in the craig District Office.

MATTERS TO BE CONSIDERED:

1. Status Report on Resolutions.
2. Status of Occidential C-b.
3. Colorado Division of Wildlife's Harvest Statistics.
4. Colorado Division of Wildlife's Deer, Elk, and Antelope Program Issues.
5. Habitat Partnership Program Update.
6. Recreation 2000.
7. Election of Officers.

CONTACT PERSON FOR MORE INFORMATION: Mary Pressley, Craig district Office, 455 Emerson Street, Craig, Colorado 81625-1129, Phone: (303) 824-8261.

Dated: April 17, 1991.

Kenneth P. Smith,

Acting District Manager.

[FR Doc. 91-10014 Filed 4-26-91; 8:45 am]

BILLING CODE 4310-JB-M

[NV-930-00-4212-14; N-52458]

Realty Action; Direct Sale of Federal Land in Nye County, NV

SUMMARY: The following described land has been examined and identified as suitable for disposal by direct sale to Nye County under sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713 and 1719) at the appraised fair market value:

Mount Diablo Meridian

T. 12 S,. R. 47 E.,

Sec. 7, parcels A-Z and AA-DD.

Thirty parcels of land containing a total of 93.45 acres.

The proposed sale is a sale of the streets and alleys within the Beatty Townsite. The sale is consistent with the Bureau's planning system and in conformance with the Esmeralda-Southern Nye Resource Management Plan, approved October 10, 1986. The parcels are isolated. The land is not needed for any resource program and is not suitable for management by the Bureau or any other Federal department or agency. The land will not be offered for sale for at least 60 days after the publication of this Notice in the **Federal Register.** These lands may be in a flood prone area.

Patent, when issued, will contain the following reservation to the United States:

A right-of-way thereon for ditches and canals constructed by the authority of the United States, in accordance with the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

No minerals will be reserved to the United States.

Patent will be subject to all valid prior existing rights. The following reservation should be made to the Nevada Department of Transportation: CC–020518, 100' wide right-of-way for SR 374 across parcels G, H, I, and J.

The lands are not within any grazing allotment.

GENERAL INFORMATION: Publication of this notice in the **Federal Register** segregates the public lands from all forms of appropriation under the public land laws and the mining laws. The segregative effect will end upon issuance of a patent to these lands, upon publication in the **Federal Register** of a notice of termination, or 270 days from the date of publication of this notice, whichever comes first.

The appraised fair market value of the 93.45 acre tract will be made available at a later date.

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 1420, Battle Mountain, NV 89820. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

James D. Currivan,

District Manager, Battle Mountain District.

[FR Doc. 91–9973 Filed 4–26–91; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF INTERIOR

Geological Survey

Southern California Earthquake Center (SCEC); Restriction of Eligibility for Cooperative Agreement Award

The U.S. Geological Survey (USGS) intends to award cooperative agreement 14–08–0001–A0901 to the California Institute of Technology (Caltech) in support of enhancements of the joint USGS-Caltech operation of the SCEC. Initial USGS funding will be $376,958.

Project Scope: The geoscientific database at Caltech will be integrated for the purpose of formulating seismic hazard analysis. Support of enhancements to the joint operation will serve to meet the goals of the USGS's Earthquake Hazards Reduction Program. Therefore, award of a cooperative agreement for support of the database is appropriate.

Further Information: For further information contact Elaine Padovani, U.S. Geological Survey, Geological Division—MS 905, 12201 Sunrise Valley Drive, Reston, VA 22092, Telephone 703–684–6722 or Thomas Heaton, U.S. Geological Survey, Office of Earthquake, Volcanoes and Engineering, 525 South Wilson Avenue, Pasadena, CA 91106, Telephone 818–405–7814.

(Catalog of Federal Domestic Assistance Number 15.807)

Dated: April 3, 1991.

Jack J. Stassi,

Assistance Director for Administration.

[FR Doc. 91–9978 Filed 4–26–91; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service (MMS)

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) (for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of informatioan and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010–0043); Washington, DC 20503, telephone (202) 395–7340, with copies to John V. Mirabella; Acting Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virigina 22070–4817.

Title: 30 CFR part 250, subpart F, Well-Workover Operations.

OMB approval number: 1010–0043.

Abstract: The information will be used by MMS's District Supervisors to evaluate and approve or disapprove the adequacy of equipment and/or procedures to be used during the conduct of well-workover operations. The information collection requirements are being modified to clarify the information the lessees are required to document concerning blowout-preventer tests.

Bureau form number: None.

Frequency: On occasion.

Description of respondents: Federal Outer Continental Shelf oil and gas lessees.

Estimated completion time: .5 hour.

Annual responses: 2,220.

Recordkeeping hours: 326.

Annual burden hours: 1,436.

Bureau clearance officer: Dorothy Christopher (703) 787–1239.

Dated: April 5, 1991.

Carolita U. Kallaur,

Associate Director for Offshore Minerals Management.

[FR Doc. 91–9977 Filed 4–26–91; 8:45 am]

BILLING CODE 4310–MR–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010–0067); Washington, DC 20503, telephone (202) 395–7340, with copies to John V. Mirabella; Acting Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817.

Title: 30 CFR part 250, subpart E, Well-Completion

OMB approval number: 1010–0067

Abstract: Respondents submit this information to MMS's District Supervisors so they can evaluate and approve or disapprove the adequacy of equipment and/or procedures to be used during the conduct of well-completion operations.

Bureau form number: None.

Frequency: Varies.

Description of respondents: Federal Outer Continental Shelf oil and gas lessees.

Estimated completion time: .5 hour.

Annual responses: 2,220.

Recordkeeping hours: 298.

Annual burden hours: 1,408
Bureau clearance officer: Dorothy Christopher, (703) 787–1239.

Dated: April 5, 1991.

Carolita U. Kallaur,

Associate Director for Offshore Minerals Management.

[FR Doc. 91–9985 Filed 4–26–91; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development International Disaster Advisory Committee; Meeting

The International Disaster Advisory Committee (IDAC) Wednesday, May 29, 1991. Topics for discussion will include corporate-government cooperation for international disaster, mitigation, prevention and response.

Date: May 29, 1991.

Time: 2 p.m.–4 p.m.

Place: Old Executive Office Building 17th and Pennsylvania Avenue, Washington, DC.

The meeting is free and open to the public. However, Notification by May 15, 1991, through the Advisory Committee Office is required.

Persons wishing to attend the meeting must call Anne C. Bradley (202) 647–5210 before May 17, 1991, or write to be received by that date to: International Disaster Advisory Committee, Agency for International Development, room 1262A NS, Washington, DC 20523–0008.

Dated: April 22, 1991.

Oliver R. Davidson,

Executive Director, International Disaster Advisory Committee.

[FR Doc. 91–10020 Filed 4–26–91; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Lodging of Final Judgment by Consent Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on April 18, 1991, a consent decree in *United States* v. *Hercules Incorporated, et al.*, Civil Action No. 89–562–LON, was lodged with the United States District Court for the District of Delaware. This is the second consent decree lodged in this action. See 55 FR 36916 (September 7, 1990).

The amended complaint filed by the United States on December 27, 1990, alleges that Hercules Incorporated, Allied-Signal, Inc., American Can Corporation, American Cyanamid Company, Amoco Chemical Corporation, Avon Products, Inc., Champlain Cable Corporation, Chrysler Corporation, Congoleum Corporation, E.I. du Pont de Nemours & Co., Inc., General Motors Corporation, ICI Americas, Inc., Johnson Controls, Inc., Motor Wheel Corporation, Occidental Chemical Corporation, SCA Services, Inc. ("SCA"), Standard Chlorine of Delaware, Inc., Waste Management of Delaware, Inc. ("WMDI"), and Witco Corporation, are responsible to reimburse the United States costs totalling in excess of $2.1 million incurred by the Environmental Protection Agency ("EPA") between November 1, 1979 and April 22, 1988, in responding to the release and threatened release of hazardous substances from the Delaware Sand & Gravel Landfill Superfund Site in New Castle County, Delaware (the "Site"). The amended complaint also alleges that all defendants, except SCA and WMDI, arranged for the transport to and disposal of hazardous substances at the Site, and that SCA and WMDI selected the Site and transported to and disposed of hazardous substances at the Site. The United States, on behalf of EPA, seeks judgment against the defendants jointly and severally for reimbursement of the aforementioned past response costs under section 107(a) of CERCLA, 9607(a), and a determination under section 113(g)(2) of CERCLA, 42 U.S.C. 9613(g)(2), that any finding of liability would be binding in any subsequent action for further response costs.

In the consent decree, Avon Products, Inc. ("Avon") has agreed to reimburse the Hazardous Substance Response Trust Fund (the "Fund") in the amount of $325,000.00. The consent decree does not resolve Avon's liability for any costs other than those incurred by the United States between November 1, 1979 and April 22, 1988, and costs of enforcement and statutory interest specified in the consent decree. Under the consent decree, the United States' request for declaratory relief against Avon under section 113(g)(2) of CERCLA, 42 U.S.C. 9613(g)(2) will be dismissed without prejudice. Hercules Incorporated, Allied-Signal, Inc., American Can Corporation, American Cyanamid Company, Amoco Chemical Corporation, Avon Products, Inc., Champlain Cable Corporation, Chrysler Corporation, Congoleum Corporation, E.I. du Pont de Nemours & Co., Inc., General Motors Corporation, ICI Americas, Inc., Johnson Controls, Inc., Motor Wheel Corporation, Occidental Chemical Corporation, SCA Services, Inc. ("SCA"), Standard Chlorine of Delaware, Inc., Waste Management of Delaware, Inc. ("WMDI"), and Witco Corporation have not resolved their liability for response costs claimed in the amended complaint. But see 55 FR 36916 (September 7, 1990).

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Hercules Incorporated, et al.*, DOJ Ref. No. 90–11–2–298. The proposed consent decree may be examined at the office of the United States Attorney, District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, room 5110, Wilmington, Delaware. Copies of the consent decree may also be examined and obtained in person at the Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice, room 6314, Tenth and Pennsylvania Avenue, NW., Washington, DC. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice, Box 7611 Ben Franklin Station, Washington, DC 20044.

When requesting a copy of the consent decree by mail, please enclose a check in the amount of $1.10 (ten cents per page reproduction costs) payable to the "Consent Decree Library."

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91–10019 Filed 4–26–91; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interst in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 9, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 9, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 15th day of April 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Affiliated Indus. of Shippensburg (Wkrs)	Shippensburg, PA	04/15/91	03/30/91	25,659	Department Store Fixtures.
Atlas Power Co. (OCAW)	Tamaqua, PA	04/15/91	04/02/91	25,660	Machines Assembly.
Bates Corrugated (UPIU)	Townsend, MA	04/15/91	03/08/91	25,661	Boxes.
Connecticut Mfg. Co., Inc. (Wkrs)	Waterbury, CT	04/15/91	02/22/91	25,662	Screws & Fasteners.
Crydom Corp. (Wkrs)	Milwaukee, WI	04/15/91	03/27/91	25,663	Circuits.
CTS Electronics Corp. (Wkrs)	Brownsville, TX	04/15/91	03/07/91	25,664	Components.
Dallco Industry, Inc. (Company)	York, PA	04/15/91	04/03/91	25,665	Apparel.
Dallco Industry, Inc. (Wkrs)	Mt. Union, PA	04/15/91	04/03/91	25,666	Apparel.
Dinner Bell/B.J. Packing (UFCW)	Defiance, OH	04/15/91	04/02/91	25,667	Pork.
Electric Mobility Corp. (Wkrs)	Westville, NJ	04/15/91	04/03/91	25,668	Handicapped Bikes.
Electric Mobility Corp. (Wkrs)	Sewell, NJ	04/15/91	04/03/91	25,669	Handicapped Bikes.
Frame One Corp. of America (Wkrs)	Roanoke, VA	04/15/91	03/25/91	25,670	Frame Pictures.
Gear Products Inc. (Wkrs)	Tulsa, OK	04/15/91	03/25/91	25,671	Bearings.
General Electric Co. Appliances (SMW)	Cicero, IL	04/15/91	04/03/91	25,672	Household.
Gilbert & Bennett (Wkrs)	Georgetown, CT	04/15/91	03/20/91	25,673	Wire Fencing.
Glamour Sportswear Corp. (Wkrs)	Frackville, PA	04/15/91	04/02/91	25,674	Sportswear.
HBI Automotive Glass (ABGWIU)	Lancaster, OH	04/15/91	04/02/91	25,675	Auto Glass.
K. T. Swasey (IAMAW)	Solon, OH	04/15/91	04/04/91	25,676	Cutting Machinery.
Keystone Carbon Co. (Wkrs)	St. Marys, PA	04/15/91	04/01/91	25,677	Power Tools.
Liz Ann Mfg., Co. (Wkrs)	New Braunfels, TX	04/15/91	04/03/91	25,678	Clothing.
New Jersey Tanning Co. (LWU)	Newark, NJ	04/15/91	03/11/91	25,679	Leather Goods.
Otis Elevator Co. Controllers (IUE)	Bloomington, IN	04/15/91	03/25/91	25,680	Elevator & Components.
Pacific Press & Shear (IAM&AW)	Mt. Carmel, IL	04/15/91	04/03/91	25,681	Brakes & Shears.
Pat Fashions, Inc. (Wkrs)	Perth Amboy, NJ	04/15/91	04/03/91	25,682	Coats.
Quantum Chemical Corp., USI Div. (Wkrs)	Rolling Meadows, IL	04/15/91	04/01/91	25,683	Plastic.
Rodime, Inc. (Company)	Boca Raton, FL	04/15/91	03/21/91	25,684	Hard Disk Drive.
Sharpe Cedar Products (Wkrs)	Onalaska, WA	04/15/91	03/31/91	25,685	Cedar Fence Boards.
Snap-On Tools Corp. (IAM)	Mt. Carmel, IL	04/15/91	04/04/91	25,686	Hand Tools.
Stinson Canning (Wkrs)	Rockland, ME	04/15/91	04/01/91	25,687	Fish.
Straits Forest Products, Inc. (Wkrs)	Amanda Park, WA	04/15/91	04/19/91	25,688	Softwood Lumber & Chips.
Straits Forest Products, Inc. (Wkrs)	Pt./ Angeles, WA	04/15/91	03/19/91	25,689	Softwood Lumber & Chips.
Tektronix, Inc. (Wkrs)	Beaverton, OR	04/15/91	04/02/91	25,690	Hybrid Components.
Tultex Corp. (Wkrs)	Marion, NC	04/15/91	03/25/91	25,691	Sweatshirts.
Tultex Corp. (Wkrs)	Spindale, NC	04/15/91	03/25/91	25,692	Sweatshirts.
Tultex Corp. (Wkrs)	Martinsville, VA	04/15/91	03/25/91	25,693	Sweatshirts.
United Technologies Auto Group (IBEW)	Wabash, IN	04/15/91	03/28/91	25,694	Auto Wire Harness.
Weather Tamer, Inc. (Wkrs)	Centerville, TN	04/15/91	03/30/91	25,695	Outerwear.
Winning Moves, Inc. (Wkrs)	Athens, AL	04/15/91	03/26/91	25,696	Outerwear.

[FR Doc. 91-10053 Filed 4-26-91; 8:45 am]

BILLING CODE 4810-30-M

[TA-W-24,316]

Hercules, Inc., Radford Army Ammunition Plant; Radford, VA; Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance; Correction

This notice corrects the certification on petition TA-W-24,316 which was published in the **Federal Register** on June 26, 1990 (55 FR 26035) in FR Document 90-14788. The Department inadvertently set the impact date as January 1, 1989 and left out the termination date of January 1, 1991.

The affirmative determination for petition TA-W-24,316 should read: "Hercules, Inc., Radford Army Ammunition Plant, Radford, VA. A certification was issued covering all workers separated on or after January 1, 1990 and before January 1, 1991."

Signed in Washington, DC, this 17th day of April 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-10054 Filed 4-26-91; 8:45 am]

BILLING CODE 4510-30-M

Commission on Achieving Necessary Skills; Open Meeting

AGENCY: Employment and Training Administration, Labor.

SUMMARY: The Secretary's Commission on Achieving Necessary Skills (SCANS) was established in accordance with the Federal Advisory Committee Act (Public Law 92-463) on February 20, 1990. The Commission is to advise the Secretary on national competency guidelines for the level of basic skills required of high school graduates for entry into employment. The Commission will be charged with the practical task of

specifying and quantifying levels of basic skills' attainment to adequately perform different types of entry-level jobs.

TIME AND PLACE: The sixth meeting will be held May 17, 1991, from 9 a.m. until 5 p.m. at the Washington Vista Hotel, Ballroom A, Ballroom Level, 1400 M Street, NW., Washington, DC 20005.

AGENDA: The agenda for the meeting follows:

1. Welcome and Introductions.
2. Presentation and discussion of the Commission's draft report to the Secretary of Labor defining Functional Skills.
3. Public comment.

PUBLIC PARTICIPATION: The meeting will be open to the public. Thirty minutes will be set aside for public comments. Seating will be available for the public on a first-come, first-serve basis. Five seats will be reserved for the media. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made.

Individuals or organizations wishing to submit written statements should send 10 copies to Dr. Arnold Packer, Executive Director, SCANS—room C-2318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Papers received on or before April 30, 1990 will be included in the record of the meeting.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Packer, Exec. Dir., SCANS—room C-2318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523-4840.

Signed at Washington, DC this 22nd day of April 1990.

Lynn Martin,

Secretary of Labor.

[FR Doc. 91-10052 Filed 4-26-91; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATES: Request for copies must be received in writing on or before June 13, 1991. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Air Force (N1-AFU-91-24). Routine payroll records.

2. Department of the Air Force (N1-AFU-91-25). Short-term records of closing bases.

3. Department of Agriculture, Animal and Plant Health Inspection Service (N1-463-91-1). Routine and facilitative records.

4. Department of Commerce, Bureau of the Census (N1-29-89-3). Selected Title 15 datafiles.

5. Department of Commerce, Patent and Trademark Office, Office of Patent Services (N1-241-90-1). Licensing files for Government interests.

6. Department of Energy, Bonneville Power Administration (N1-305-90-2). Environmental quality, legal, and resource planning and forecasting records.

7. United States Information Agency, Voice of America (N1-306-90-4). Facilitative and duplicative files.

8. Department of the Interior, Minerals Management Service (N1-473-91-1). Summary Geologic Reports and Block Nomination Files.

9. Department of Justice, Immigration and Naturalization Service (N1-85-91-1). Congressional correspondence regarding constituent inquiries.

10. Department of Labor, Wage and Hour and Public Contracts Division (N1-155-91-1). Administrative and programmatic records, 1936-72, including notices, contract files, compliance survey and review cards, hearing transcripts, industry reports, routine memoranda and operations bulletins.

11. Office of Personnel Management, Office of International Affairs (N1-478-91-1). Records relating to visits of foreign nationals.

12. Occupational Safety and Health Review Commission (N1-455-90-1). Case files relating to notices of contests of citations issued under provisions of the Occupational Safety and Health Act of 1970.

13. Department of State, All Foreign Service Posts (N1-84-91-2). Visa refusal and child custody case files.

Dated: April 19, 1991.

Don Wilson,

Archivist of the United States.

[FR Doc. 89-9974 Filed 4-26-91; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL SCIENCE FOUNDATION

Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of each permit application received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of a permit application received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by May 31, 1991. The permit application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357-7934.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The application received is as follows:

Applicant 91-02: R. R. Veit, Department of Zoology, University of Washington, Seattle, Washington 98195.

Activity for which permit requested: Taking. Import into USA. The applicant is conducting research on the spatial association of Antarctic pelagic birds and Antarctic Krill, and requests permission to collect birds to examine stomach contents. The applicant also requests permission to collect birds to supplement the comparative collections of the University of Washington Burke Museum. The applicant requests permission to take the following specimens:

BURKE MUSEUM PROPOSED SPECIMEN COLLECTIONS AROUND SOUTH GEORGIA JUNE-JULY, 1991

Permit request	Species
1	Wandering Albatross.
10	Black-borowed Albatross.
10	Gray-headed Albatross.
10	Light-mantled Sooty Albatross.
10	Southern Giant Petrel.
10	Northern Giant Petrel.
10	Antarctic Fulmar.
20	Antarctic Petrel.
20	Cape Petrel.
20	Kerguelen Petrel.
20	White-chinned Petrel.
20	Blue Petrel.
30	Dove Prion.
20	Fairy Prion.
5	Gray-backed Storm-Petrel.
2	Black-bellied Storm-Petrel.
40	Common Diving Petrel.
5	Georgian Diving Petrel.
2	King Penguin.
2	Emperor Penguin.
10	Gentoo Penguin.
10	Chinstrap Penguin.
5	Macaroni Penguin.
5	Imperial Shag.
10	Yellow-billed Pintail.
5	American Sheathbill.
5	Antarctic Skua.
5	Kelp Gull.
10	Antarctic Tern.
5	South Georgia Pipit.

Location: South Georgia, Antarctic Peninsula

Dates: June-August 1991.

Charles Myers,

Permit Office.

[FR Doc. 91-10062 Filed 4-26-91; 8:45 am]

BILLING CODE 7555-01-M

Notice of Meeting; Amendment

The Advisory Committee for Biological, Behavioral, and Social Sciences (BBS) is changing the date of its meeting. The advisory committee was scheduled to meet on May 2-3, 1991 at the National Science Foundation. This meeting is being postponed until May 28-29. The agenda remains the same.

The location of the May 28-29 meeting is not known at this time. Those persons wishing to attend should call the Assistant Director's office at 202-357-9854 for specifics.

The original notice for this meeting appeared in the **Federal Register** on April 15, 1991, vol. 56, no. 72, page 15103.

Dated: April 24, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-10063 Filed 4-26-91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-341]

Detroit Edison Company; Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Detroit Edison Company (DECo), (licensee) for an amendment to Facility Operating License No. NPF-43 issued to the licensee for operation of the Fermi-2 facility, located in Monroe County, Michigan. A Notice of Consideration of Issuance of this amendment was not published in the **Federal Register**.

The proposed license amendment was to revise the Technical Specifications (TS) to permit DECo to maintain the residual heat removal (RHR) system operable with the minimum flow valve disabled in the closed position when the system is in the shutdown cooling mode of operation. The NRC staff has concluded that the licensee's request cannot be granted. The licensee was notified of the Commission's denial of the proposed change by letter dated April 18, 1991.

By May 29, 1991, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to John Flynn, Esq., Detroit Edison Company, 200 Second Avenue, Detroit, Michigan 48226, attorney for the licensee.

For further details with respect to this action, see (1) The application for amendment dated August 2, 1990, and (2) the Commission's letter to the licensee dated April 18, 1991.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48226. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 18th day of April 1991.

For the Nuclear Regulatory Commission.

L.B. Marsh,

Project Director, Project Directorate III–1, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91–10041Filed 4–26–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–286, License No. DPR–64, EA 90–178

Order Imposing Civil Monetary Penalty

In the Matter of New York Power Authority, Indian Point 3 Nuclear Power Plant, Buchanan, New York 10511,

I

The New York Power Authority (Licensee) is the holder of License No. DPR–64 issued by the Nuclear Regulatory Commission (NRC or Commission). The license authorizes the Licensee to operate the Indian Point 3 nuclear reactor in Buchanan, New York in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted at the facility on September 14–20, 1990. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated December 7, 1990. The Notice states the nature of the violation, the provision of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violation. The Licensee responded to the Notice on January 18, 1991. In its response, the Licensee denied the violation. However, in the alternative, the Licensee requested full mitigation of the civil penalty if the NRC maintains that a violation occurred.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the appendix to this Order, that the violation occurred as stated and that the penalty proposed for the violation designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is Hereby ordered That:*

The Licensee pay a civil penalty in the amount of $50,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in the Notice referenced in section II above, as amended in the appendix to this Order, and

(b) whether, on the basis of such violation, this Order should be sustained.

Dated at Rockville, Maryland this 19th day of April 1991.

For the Nuclear Regulatory Commission.

James H. Sniezek,

Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research.

Appendix—Evaluations and Conclusions

On December 7, 1991, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for a violation identified during an NRC inspection. New York Power Authority (Licensee) responded to the Notice January 18, 1991 (Response). In its Response, the Licensee denies the violation. However, the Licensee also contends that full mitigation of the civil penalty is warranted if the NRC maintains that the violation occurred. The NRC's evaluation and conclusion regarding each of the licensee's requests are as follows:

1. Restatement of Violation

10 CFR 50.54(k) requires that an operator or senior operator licensed pursuant to Part 55 of this chapter shall be present at the controls at all times during the operation of the facility.

Technical Specifications (T.S.) 6.2.2 requires a minimum crew composition which includes, in part, two licensed Senior Reactor Operators and two licensed Operators (T.S. 6.2.2.a). Further, it requires that a licensed Senior Reactor Operator be on duty in the control room at all times (T.S. 6.2.2.h) and that a licensed Operator be in the control room when fuel is in the reactor (T.S. 6.2.2.b)

Contrary to the above, at approximately 5:07 a.m. on September 14, 1990, at a time when the reactor was in an operational condition with fuel in the reactor vessel, the NRC Senior Resident Inspector observed that the licensed Operator and licensed Senior Reactor Operator in the control room assigned to monitor the operation of Unit 3, were not fully attentive to their duties; thus, neither a reactor operator nor senior reactor operator were present at the controls as required. The licensed Reactor Operator (RO) was not fully attentive to his duties in that the inspector observed the licensed Reactor Operator with his eyes closed, head tilted back, and feet up on a desk. The licensed Senior Reactor Operator was not fully attentive to his duties in that the inspector observed him with is eyes closed, and head tilted back.

This is a Severity Level III violation. (Supplement I)

Civil Penalty—$50,000.

2. Summary of Licensee's Response Concerning Denial of the Violation

The Licensee denies the violation, stating that the NRC did not adequately take into account several events that occurred shortly before the alleged inattentive period which, along with the statements of the operators, provide strong evidence tha the operators were attentive to their duties when observed by the Senior Resident Inspector (inspector). The Licensee believes that the NRC has not considered the whole record and that the sanction imposed is not supported by substantial evidence. The Licensee submits that the NRC has not struck a fair balance between the sole observation of the inspector, which it additionally believes is mistaken with respect to the licensed reactor operator (RO), and the weight of the evidence which it claims supports a finding that both operators were attentive to their duties during the period in question.

With respect to the licensed senior reactor operator (SRO), the Licensee does not dispute the facts provided by the inspector as well as the SRO's acknowledgement that his eyes may have been closed for as long as 60 seconds. However, the Licensee states that the NRC proposes to set a standard for attentiveness that is unreasonable and largely undefined, and that a licensed operator can remain attentive to his duties while his eyes are closed for up to 60 seconds. The Licensee indicates that the SRO stated that his mind was on his work while his eyes were momentarily shut, thinking of

the next jobs to perform on shift, and the Licensee indicates that there is nothing in the record to refute the SRO's testimony. The Licensee also states that the inspector acknowledged that the SRO was instantly alert when he opened his eyes. The Licensee further states that the SRO denies that his head was tilted back or that he was asleep, and that the SRO asserts he was stretching his back muscles to obtain relief from a minor discomfort associated with a recurring back problem. The Licensee also states that the SRO has an excellent performance record and has never been found inattentive to duties.

With respect to RO, the Licensee states that the inspector's observation is not in accord with the RO's testimony, and provides what it believes are reasonable explanations for the factual differences between the inspector's and RO's accounts. Specifically, the Licensee states that it may be that the movement by the RO which the inspector interpreted as dropping of the feet from the desk to the floor was actually the shifting of the RO's leg from under his body and the dropping of his foot to the floor because he had developed an idiosyncrasy of sitting in a chair with one leg folded under him. The Licensee also states that, although the RO allegedly "appeared to have just awakened" when the inspector addressed the RO and SRO in the control room, the Licensee claims that this may have been nothing more than the RO's normal facial expression which may appear to be somewhat lethargic. The Licensee notes that the RO stated that he was aware that someone had entered the control room and had turned his head and saw the inspector approaching. The Licensee also contends that the RO has an excellent performance record and has never been found inattentive to duties.

With respect to both individuals, the Licensee also notes that there was a phone call from Indian Point 2 shortly before the inspector entered the control room which rang loudly on several phones in the control room and that 5 a.m. log readings were taken on time. The Licensee also indicated that there was also a plant vent monitor alarm shortly before the inspector entered the control room and the RO silenced the alarm and the SRO investigated the indication. The Licensee also points out that shift management was present in the control room on nine separate occasions earlier in the shift which provided further evidence that the operators were attentive.

The Licensee further submits that the NRC is dealing with the appearance of inattentiveness, and not inattentiveness, and claims that the NRC's definition of inattentiveness is unreasonable. In support of this contention, the Licensee notes that operators are routinely involved in control room activities that distract their attention from the panels. The Licensee provided examples of such activities, such as an operator's eyes being directed away from the control board while discussing issues with plant personnel or an NRC inspector, when reviewing operations related documents, or when responding to plant operations related telephone calls. The Licensee states that such examples would also be considered examples of inattentiveness if the NRC position in this case is maintained.

NRC Evaluation of Licensee's Response

The NRC has evaluated the Licensee's Response, and based upon that evaluation, continues to conclude that the RO and SRO were not fully attentive to their duties, and therefore, a violation of NRC requirements did exist.

Before responding to the individual arguments raised by the NRC, it is clear, from some of the Licensee's arguments, that a restatement of the obligation of a licensed reactor operator or senior reactor operator to be fully attentive to their duties is necessary. For a licensed operator to be satisfactorily performing his duties while in the control room, the operator must be physically present and able to respond to changes in plant status at all times. The operator must be continuously cognizant of plant status and trends based upon frequent and comprehensive observation of control panel indications. Awareness of plant status based on control room indications and responding appropriately to those indications is the primary responsibility of a reactor operator. Continuous observations of the control panels is not required. The NRC recognizes that reactor operators have important secondary responsibilities in addition to awareness of plant status, such as discussing issues with plant personnel or NRC inspectors, completing logs and communicating by phone in the furtherance of safe plant operations. Such activities are permitted as long as they do not cause the reactor operator to lose awareness of plant status. When not performing such legitimate secondary duties, reactor operators must devote their full attention to plant status and controls. Sleeping, performing non-job-related tasks while on shift, engaging in potentially distracting or unauthorized activities that impare an operator's ability to remain alert and responsive to plant conditions, or the condition of others on shift, and lack of attention to control room activities are not compatible with the reactor operator's obligation to be fully attentive and, therefore, are prohibited. With these standards in mind, the Staff now addresses the Licensee's arguments.

With respect to the SRO, the NRC concedes that the SRO's head may not have been tilted back when observed by the inspector, given the slouched position of the individual in the chair. Accordingly, the violation is amended by revising the last sentence to read as follows:

"The licensed Senior Reactor Operator was not fully attentive to his duties in that the inspector observed him with his eyes closed."

The NRC is concerned, however, that the SRO's eyes were closed for a period of time. The NRC has considered the Licensee's contention that the SRO was stretching his back muscles and had his mind on work while his eyes were closed. Nevertheless, the NRC remains convinced that the SRO was not fully attentive to his duties since (1) the inspector observed the individual with his eyes closed (admittedly on the part of the SRO for as long as 60 seconds); (2) the inspector observed that the SRO was in a relaxed and comfortable position without any movement from the time the inspector entered the control room until the inspector obtained the SRO's attention when he knocked on a desk beside the SRO; and (3) the SRO was not cognizant of the posture, position and inattentiveness of the RO at the time the inspector observed the condition of both individuals in the control room. In addition, the SRO did not turn around to see the inspector's entry into the control room although it was the inspector's experience that it was standard practice for an SRO to do so. Accordingly, when these factors are considered in total, the NRC concludes that the SRO was not fully attentive to his duties at approximately 5:07 a.m. on September 14, 1990. The length of time that the SRO would have remained in a position that compromised the SRO's ability to remain alert had the NRC inspector not challenged the condition would have been longer, though how much longer is open to speculation. The inspector did observe as reported in NRC Inspection Report No. 90–16 that the SRO appeared to be a alert after he opened his eyes.

With respect to the RO, the NRC does not accept the Licensee's contention that the inspector misconstrued the posture and position of the individual. The NRC maintains that the RO was not fully attentive to his duties since: (1) from the time that the inspector entered the operating area of the control room, the inspector maintained complete observation of the RO and noted that his feet were on the desk, and his head was tilted back; (2) during the time the inspector traversed the operating area to the area next to the SRO, there was no movement on the part of the RO, and the RO did not look back to view the inspector, contrary to the Licensee's stated assertion that he did so; (3) when the inspector arrived at the area next to the SRO, he could clearly see that the RO's feet were on the desk, both of the RO's eyes were closed, and the RO's head was tilted back; and (4) the RO (who did not in any manner acknowledge or respond to the inspector's presence) reacted with a startled facial expression when the inspector knocked on the desk next to the SRO and spoke to the two operators. Accordingly, when these factors are considered in total, the NRC concludes that the RO was not fully attentive to his duties at approximately 5:07 a.m. on September 14, 1990. As with the SRO, if the inspector had not intervened, the length of time that the RO would have remained inattentive is open to speculation.

With respect to both individuals, the NRC has no reason to dispute the Licensee's statements that the RO and SRO have excellent performance records. However, those records do not alter the actual observations by the inspector on September 14, 1990. The NRC also acknowledges that there was a telephone call received by the control room, as well as a plant vent monitor alarm, shortly before the inspector entered the control room and that shift management may have been in the control room on nine occasions on that shift, and that shift management states that the individuals were attentive to duties at those times. However,

contrary to the Licensee's assertions, that information does not alter the actual observations by the inspector that those individuals were not fully attentive to duties when the inspector entered the control room at approximately 5:07 a.m. on September 14, 1990. The NRC notes that the Licensee's evidence of activity during this shift and supervisors observations contributed significantly to the NRC conclusion that the period of time the individuals were not fully attentive had existed for only a short period.

Based on the above, the NRC maintains that both the RO and SRO were not fully attentive to their duties at approximately 5:07 a.m. on September 14, 1990, and the Licensee had not provided an adequate basis for withdrawal of that violation. Therefore, the violation remains as stated, with the exception of that portion of the Notice which indicates that the SRO's head was tilted back.

3. Summary of Licensee's Response Requesting Mitigation of the Civil Penalty

The Licensee contends that, if the NRC adheres to the view that a violation occurred, the proposed penalty should be mitigated in full since the Licensee disagrees with the NRC statement in the letter transmitting the Notice that the Licensee's corrective actions were not prompt and comprehensive. The Licensee indicates that, following this incident, it initiated a prompt investigation and instituted several measures to address the possibility of inattentiveness by operators. Its actions included: the temporary removal of the SRO and RO from licensed activities pending the completion of the Licensee's investigation into the event; Licensee management meeting with all watchstanders immediately after the event to stress the importance of attentiveness on duty; the Resident Manager and Operations Superintendent meeting with all licensed operators to reinforce the Licensee's policy regarding attentiveness to duties; revision of procedures, as appropriate; and planned modifications to training programs, as appropriate.

With regard to the comprehensiveness of its corrective actions, the Licensee disputes the NRC statement that its initial investigation focused on the narrow issue of whether the operators were sleeping, rather than the broader issue of operator inattentiveness. The Licensee states that its investigation included interviews which covered topics including the Licensee's policy regarding attentiveness and the appearance of inattentiveness, so that it was not confined to the issue of sleeping.

The Licensee also contends that the NRC seems to ignore the fact that the Licensee has emphasized attentiveness to duty, not merely staying awake, for a number of years. The Licensee referenced several internal memoranda, meetings, and procedures to support its contention. The Licensee also indicates that programmatic enhancements have been implemented to ensure that licensed operators will be attentive while on duty. Finally, the Licensee takes issue with the NRC's view that its corrective actions were insufficient because it did not include a means for verifying attentiveness, independent of the scheduled shift. The Licensee contends that it is in the best position to assess whether additional measures such as additional unannounced visits by senior management during the backshift would enhance performance and that, in light of unannounced visits already being made by shift management, such additional visits are not warranted.

The Licensee also disagrees with the NRC's conclusion that its actions in response to the NRC's findings were not prompt since station administrative procedures were not revised to provide staff and supervisors with guidance on attentiveness until six weeks after the event. The Licensee states that several meetings with licensed personnel were held within hours of the event to reinforce the Licensee's policy on the matter, and the Licensee discussed its schedule for responsive actions with the NRC within 48 hours of the incident, and the NRC gave every indication during those discussions that the planned schedule was fully acceptable. The Licensee maintains that the most important corrective actions were taken within a week or so after the event. The Licensee states that the fact that procedures were not revised for several weeks following the event is not of significance since it had stressed the importance of attentiveness in the meetings. Further, the Licensee states that it elected to await completion of the interviews it conducted with a significant number of licensed operators because it wanted the benefit of the information provided by those interviews before modifying the procedures so that any relevent knowledge acquired could be reflected in the new procedures.

NRC Evaluation of Licensee's Response Requesting Mitigation of the Civil Penalty

The NRC recognizes that the Licensee promptly removed the operators from their duties on a temporary basis, immediately stationed the assistant shift supervisor in the control room, and initiated a prompt investigation of this event (including review of log and data entries as well as interviews with all operators) when informed of the inspector's finding. The NRC also recognizes that the Licensee promptly discussed this event with all watchstanders. The NRC agrees that the Licensee discussed portions of its schedule for corrective actions with the NRC within 48 hours of this event, though the NRC did not provide any indication that the Licensee's planned schedule was fully acceptable. The NRC accepts the argument that the procedure revisions need not have been made sooner since the message had already been delivered to all operators in meetings. The NRC concludes that the Licensee was prompt in these specific actions. However, the Licensee's actions were not sufficiently comprehensive.

With regard to the comprehensiveness of the Licensee's corrective actions, notwithstanding the fact that the Licensee conducted interviews with plant personnel which included the discussion of operator inattentiveness, the Licensee, in its initial questioning of the SRO and RO, focused upon whether these individuals were sleeping rather than the broader issue of attentiveness to duty. For example, the Licensee did not explore the SRO's supervision of the RO and the issue of their positions and postures. In fact, the NRC is concerned that the Licensee was ready to return these individuals to licensed duties when Licensee mangement briefed NRC management at approximately 4 p.m. on the afternoon of September 14, 1990, without fully exploring these issues, or the broader issue of whether these individuals had been inattentive to their duties until the NRC intervened.

The NRC recognizes that the Licensee promptly instituted several measures following the event. Those measures included meetings with all watchstanders, and planned revision of procedures and modifications to training programs. However, for the reasons given above, the Licensee's actions, while ultimately acceptable, were not initially sufficiently comprehensive, given the significant role that licensed operators have in ensuring that the reactor is operated safely and in accordance with the facility Technical Specifications, to merit mitigation based on the application of this factor.[1]

4. NRC Conclusion

The NRC has concluded that this violation as amended occurred and that the Licensee has not provided an adequate basis for either withdrawal of the violation, or for mitigation of the civil penalty. Consequently, the proposed civil penalty in the amount of $50,000 should be imposed.

[FR Doc. 91-10040 Filed 4-26-91; 8:45 am]
BILLING CODE 7590-01-M

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability; Corpus Christi-Mustang I, Corpus Christi, TX

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Corpus Christi-Mustang I located on Mustang Island, Corpus Christi, Texas is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until July 29, 1991.

[1] The NRC did not, contrary to the Licensee's assertion, prescribe that the Licensee had to institute periodic unscheduled visits by senior management during backshift tours. However, given this event, and the fact that it was not identified by the existing coverage provided by shift management, whose offices are located outside of the control room, the NRC did question the absence in the Licensee's corrective actions of any increase in the level of oversight provided. The absence of such an increase in oversight, given these circumstances, provides another basis for the NRC to conclude that the corrective actions were not sufficiently comprehensive to merit mitigation.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Mike McCord, Resolution Trust Corporation, Mid-Central Consolidated Office, Board of Trade Building II, Post Office Box 419570, 4900 Main Street, Kansas City, Missouri 64141, (816) 968–7133, Fax (816) 561–0882.

SUPPLEMENTARY INFORMATION: The property is located on the northern edge of Mustang Island, one-half mile north of Port Aransas, Texas and adjoins Park Road Number 53 on the west and the Gulf of Mexico on the east. The beach adjoining the property is regulated by the City of Port Aransas. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a–3).

Characteristics of the property include: The property is rectangular in shape, undeveloped grasslands, with no man made improvements. A public beach is adjacent to the eastern boundary of the property.

Property size: 80.3 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before July 29, 1991 by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;
2. Agencies or entities of State or local government; and
3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by July 29, 1991 to Mike McCord at the above **ADDRESSES** and in the following form:

Notice of Serious Interest

Re: Corpus Christi-Mustang I

Federal Register Publication Date: April 29, 1991.

1. Entity name.
2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)).
3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).
4. Declaration of entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.
5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: April 22, 1991.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Executive Secretary.

[FR Doc. 91–10009 Filed 4–26–91; 8:45 am]

BILLING CODE 6714–01–M

Coastal Barrier Improvement Act; Property Availability; Deer Haven Ranch, Canon City, CO

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Deer Haven Ranch located near Canon City, Fremont County, Colorado is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until July 29, 1991.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: James Meeks, Resolution Trust Corporation, P.O. Box 91183, Baton Rouge, Louisiana 70821, (504) 339–1054, Fax (504) 338–0085.

SUPPLEMENTARY INFORMATION: The property is located in south central Colorado on the eastern slope of the Rocky Mountains in Fremont County and approximately 40 miles west of Pueblo, Colorado. To the west, the property borders Chaffee County; to the north, Park and Teller Counties; and to the south Custer, County. The Bureau of Land Mangement and the State of Colorado both own neighboring properties. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a–3).

Characteristics of the property include: The property is located in an area utilized for ranching. There are two parcels with the main ranch consisting of 4,297 acres. The terrain is varied with small valleys and slopes of up to 40%. Vegetation includes native grasses and trees such as Ponderosa Pine. The ranch and adjacent public lands provide excellent habitat for a variety of game and nongame wildlife species. Abundant male deer and wild turkey inhabit this area along with elk, morning dove, fox, coyote, several nongame birds, mammals and reptiles. Bald eagles also frequently use the area.

Property size: 4,936 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before July 29, 1991 by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;
2. Agencies or entities of State or local government;
3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by July 29, 1991 to James Meeks at the above ADDRESSES and in the following form:

Notice of Serious Interest

Re: Deer Haven Ranch

Federal Register Publication Date: April 29, 1991.

1. Entity name.
2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)).
3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).
4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.
5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: April 22, 1991.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Executive Secretary.

[FR Doc. 91–10006 Filed 4–26–91; 8:45 am]

BILLING CODE 6714–01–M

Coastal Barrier Improvement Act; Property Availability; Land Between the Lakes, Grand Rivers, KY

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Land Between the Lakes located near Grand Rivers, in Livingston and Lyon Counties, Kentucky is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until July 29, 1991.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting

the following person: Bob Barkey, Specialist in Charge, Resolution Trust Corporation, (Institution #7164), P.O. Box 520, Hot Springs, Arkansas 71902, (501) 321–6156, Fax (501) 321–6113.

SUPPLEMENTARY INFORMATION: The property is located off of Highway 453, partially within the city limits of Grand Rivers, Kentucky, and is part of a peninsula that is between two lakes, Kentucky Lake, which is part of the Kentucky River and Barkley Lake, which is part of the Cumberland River. Both lakes are within the Tennessee Valley Resource Development System. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a–3).

Characteristics of the property include: The property is heavily timbered and undeveloped. It fronts on its easterly boundary on Barkley Canal which connects Kentucky Lake and Barkley Lake.

Property size: 260.78 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before July 29, 1991 by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;
2. Agencies or entities of State or local government; and
3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by July 29, 1991 to Bob Barkey at the above **ADDRESSES** and in the following form:

Notice of Serious Interest

Re: Land Between the Lakes

Federal Register Publication Date: April 29, 1991.

1. Entity name.
2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)).
3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).
4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.
5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: April 22, 1991.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Executive Secretary.

[FR Doc. 91–10008 Filed 4–26–91; 8:45 am]

BILLING CODE 6714–01–M

Coastal Barrier Improvement Act; Property Availability; White River Valley Estates, Eureka Springs, AR

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as White River Valley Estates located in Eureka Springs, Carrol County, Arkansas is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until July 29, 1991.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Harry Lanpher, Specialist In Charge, Resolution Trust Corporation, (Institution #7207), 112 West Center Street, suite 200, Fayetteville, Arkansas 72702, (501) 443–9690, Fax (501) 521–7964.

SUPPLEMENTARY INFORMATION: The property is located below Beaver Dam on Beaver Lake approximately nine miles northwest of Eureka Springs, Carrol County, Arkansas and is adjacent to the Table Rock Recreational Area, a recreational area managed by the U.S. Army Corps of Engineers. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a–3).

Characteristics of the property include: The property consists of the undeveloped, wooded and open areas. Site improvements are limited to graded, unpaved dirt streets transgressing a three-acre portion of the site.

Property size: 51 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before July 29, 1991 by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;
2. Agencies or entities of State or local government; and
3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.c. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by July 29, 1991 to Harry Lanpher at the above **ADDRESSES** and in the following form:

Notice of Serious Interest

Re: White River Valley Estates

Federal Register Publication Date: April 29, 1991.

1. Entity name.
2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)).
3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).
4. Declaration by entity that it intends to use the property primarily for wildlife refuge sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.
5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: April 22, 1991.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Executive Secretary.

[FR Doc. 91–10007 Filed 4–26–91; 8:45 am]

BILLING CODE 6714–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–29109; File Nos. SR–Amex–91–06; SR–CBOE–91–11]

Self-Regulatory Organizations; American Stock Exchange, Inc. and Chicago Board Options Exchange, Inc.; Filing of Proposed Rule Changes Relating to the Joint-Exchange Options Plan.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), on April 11, 1991, and March 21, 1991, respectively, the American Stock Exchange, Inc. ("Amex") and the Chicago Board Options Exchange, Inc. ("CBOE") (collectively, "the Exchanges") have filed with the Securities and Exchange Commission ("Commission") identical proposed rule changes as described in items I, II, and III below, which items have been prepared by the Exchanges. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The adoption of rule 19c–5 under the Act effectively eliminated the Options Allocation Plan which had served since

1980 as the principal agreement among the options exchanges under which exchange-listed stocks were selected for trading.[1] In order to establish uniform procedures for selecting, listing, challenging and arbitrating the eligibility of new equity options for both exchange-traded and over-the-counter-listed securities, the Amex, CBOE, New York Stock Exchange, Inc. ("NYSE"), Philadelphia Stock Exchange, Inc. ("PHLX"), Pacific Stock Exchange, Inc. ("PSE"), and the Options Clearing Corporation ("OCC") have agreed to adopt the following Joint-Exchange Options Plan ("the Plan"). The Plan is to become effective immediately upon the Commission's approval of a rule filing for each of the exchanges noted above.[2]

Joint-Exchange Options Plan

1. An exchange which seeks to list a new equity option on a security (the "Selecting Exchange") must:

(a) Notify OCC of its selection (the "Selected Option") through the submission of an intent to certify; and

(b) Simultaneously give written notification of its selection to the other exchanges. Such Selecting Exchange has the right to determine the ticker symbol and the trading cycle for the Selected Option.

2. Upon receipt of notification from the Selecting Exchange, any other exchange may:

(a) Submit an intent to certify the Selected Option to the OCC provided such request is submitted no later than 4 p.m. New York City time on the business day following receipt of notification from the Selecting Exchange *and* further, provided such exchange(s) notifies all other exchanges of its intention to concurrently list the Selected Option; or

(b) Challenge the eligibility of the Selected Option provided notification of such challenge is submitted to the Selecting Exchange, OCC and all the other exchanges no later than 4 p.m. New York City time on the business day following receipt of notification from the Selecting Exchange. Upon any challenge, any challenging exchange and any challenged exchange shall submit written support for its claim of eligibility to the Arbitrator by 4 p.m. New York City time and to all of the other Exchanges by 5 p.m. New York City time on the third business day following notification of an intent to certify the Selected Option by the Selecting Exchange. Any exchange which has submitted an intent to certify the Selected Option will automatically be deemed to be a party to the challenge.

3. An exchange that elects to:

(a) Notify OCC of its intent to certify a Selected Option is prohibited from challenging such selection.

(b) Challenge the eligibility of a Selected Option is prohibited from requesting certification of such selection except in accordance with the provisions of paragraph 6 set forth below.

4. If no challenge is asserted as to the Selected Option and no other exchange has submitted an intent to certify such option in accordance with the provisions of paragraph 2(a), the Selecting Exchange may commence trading in such option on the third (3rd) business day following the date of its submission to the OCC of its intent to certify. Any other exchange may not commence trading the Selected Option prior to the eighth (8th) business day following the date the Selecting Exchange submitted its intent to certify to the OCC.

5. If no challenge is asserted as to a Selected Option, then the Selecting Exchange and any other exchange which has submitted an intent to certify such option in accordance with the time provisions of paragraph 2(a), may commence trading in such option on the fifth (5th) business day following the date of the Selecting Exchange's submission to the OCC of its intent to certify. Any other exchange may not commence trading the Selected Option prior to the tenth (10th) business day following the date the Selecting Exchange submits its intent to certify to the OCC.

6. If a challenge is asserted as to a Selected Option in accordance with the time provisions of paragraph 2(b) above, the Arbitrator shall resolve the challenge by the close of the business day following its receipt of written support for the Selected Option's eligibility or ineligibility from the challenged/challenging exchanges.

Should the Arbitrator require additional time to make a determination as to the Selected Option's eligibility, the Arbitrator shall notify the exchanges of the additional time needed which shall not exceed five business days from the receipt of written support from the challenged/challenging exchanges without the approval of the challenged/challenging exchanges. If the Arbitrator deems the Selected Option eligible for option trading, the challenging exchange(s) as well as any other exchange may submit an intent to certify such option and further, notify all other exchanges of its intention to list such option prior to the close of one (1) Business day following the Arbitrator's determination. Trading of the Selected Option will commence on the third (3rd) business day following the Arbitrator's resolution of the challenge for the Selecting Exchange and any other exchange which submitted an intent to certify such option in accordance with the time provision in either paragraph 2(a) or paragraph 6 herein.

7. In performing its duties and functions as Arbitrator, OCC shall determine whether a Selected Option is eligible and there shall be no appeal from the Arbitrator's determination. A Selected Option will be eligible only if it meets the applicable exchange listing standards as of the date the Selecting Exchange notifies OCC of its intent to certify such option. It shall be no defense to any challenge that any provision of an exchanges rules permits a waiver of listing requirements due to exceptional circumstances. OCC may employ whatever law firms, accounting firms or other agents and may perform such review as it, in its sole discretion, deems necessary to resolve any challenge within the time limits prescribed by this Agreement. The Arbitrator in its sole discretion shall have the right to request additional information as to eligibility or ineligibility from the selecting or challenging exchange(s) and to the extent the Arbitrator deems necessary to independently verify the information received.

It is expressly understood and agreed that, since OCC is to be the issuer of any Selected Option, it may independently of any challenge take any action permitted it under the Participant Exchange Agreement between it and the exchanges. Further, the Arbitrator may in its sole discretion, assess against any losing party or parties to any challenge the total cost of any outside services and/or OCC staff time allocated to resolving a challenge. In this regard, the exchanges jointly and severally agree to idemnify OCC and to hold it harmless from and against any and all loss, damage, or expense, resulting from its activities as Arbitrator hereunder in the performance of its duties as such.

8. All notices required under the terms of this Agreement shall be deemed to have been duly given if communicated by telefacsimile.

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[1] Rule 19c–5 allows for the multiple trading of standardized options overlying exchange-listed stocks. See Securities Exchange Act Release No. 26870 (May 26, 1989), 54 FR 23963.

[2] The Commission expects that the NYSE, PHLX, PSE, and the OCC will shortly file their own proposed rule changes to adopt the Plan.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The self-regulatory organziation has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

The purpose of this proposal is to comply with the Commission request that the options exchanges implement procedures which will supplant the Options Allocation Plan (the "old Plan") and ensure the adherence to a uniform set of guidelines for selecting new equity options. Accordingly, the exchanges have worked together to develop the Plan.

SEC rule 19c–5, which became effective on January 22, 1990, effectively eliminated the old Plan and provided for the expansion of multiple trading to include qualified exchange-listed securities along with qualified OTC securities (which have been permitted to be multiply-traded since 1985). While the old Plan was never amended to include OTC stocks under its provisions, since 1980 it has served as the principle agreement under which the five options exchanges selected, certified challenged and arbitrated disputes concerning new equity options on exchange-listed stocks.

Like its predecessor, the new Plan provides for uniform selection, certification and challenge procedures that are similar to those that were previously in effect. The exchanges will continue to pre-announce their intended selections and cerify such selections to the OCC. Further, the Plan contains provisions for exchanges to challenge and defend the eligibility of selected underlying stocks and provides for the OCC to act as arbiter to resolve any disputes.

In an attempt to permit an exchange to benefit from its research efforts, the Plan stipulates certain rigid time frames within which other exchanges must act if they seek to similarly select ("piggy-back") the same new option. Also, to satisfy member firm concerns that they receive adequate advance notice in the case an option will be multiply traded, the Plan provides certain waiting periods before the start up of such trading.

The proposed rule changes are consistent with section 6(b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchanges be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organizations' Statement on Burden on Competition

The Exchanges believe that the proposed rule changes will not impose a burden on competition.

C. Self-Regulatory Organziations' Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received although the proposed filings have been discussed with member firm representatives who appear to strongly favor the elements of the Plan.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organizations consent the Commission will:

(A) By order approve such proposed rule changes, or,

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all writen statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organizations. All submissions should refer to File Nos. SR–Amex–91–06 and/or SR–CBOE–91–11 and should be submitted by May 20, 1991.

For the Commision by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 19, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–10044 Filed 4–26–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–29120; File No. SR–NSCC–90–24]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Accelerated Approval of Proposed Rule Change Concerning Modifications to the CNS Reorganization Processing System

April 22, 1991.

On November 28, 1990, the National Securities Clearing Corporation ("NSCC"), filed a proposed rule change (File No. SR–NSCC–90–24) with the Securities and Exchange Commission ("Commission" or "SEC") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] On February 19, 1991, NSCC amended this proposal by filing Amendment No. 1. Notice of this proposal was published in the **Federal Register** on April 4, 1991, to solicit comments from interested persons.[2] No comments were received. This order approves the proposal.

I. Description of the Proposal

The proposed rule change will enhance the CNS Reorganization Processing System ("System")[3] to

[1] 15 U.S.C. 78s(b).

[2] Securities Exchange Act Release No. 29023 (March 28, 1991), 56 FR 13845.

[3] NSCC's rules governing its CNS Reorganization Processing System are set forth in NSCC's Procedures, § VII.H.4 (Corporation Reorganizations), pp. 48–52 (rev. ed., Jan. 30, 1991). See also Securities Exchange Act Release No. 24365 (April 17, 1987), 52 FR 13779 [File No. SR–NSCC–87–03] (Order approving CNS Reorganization Processing System).

CNS refers to NSCC's Continuous Net Settlement System for processing securities transactions. NSCC Rules, Rule 11 (CNS System), pp. 37–42 (rev. ed., Jan. 30, 1991).

provide for the processing of voluntary tender or exchange offers ("tender offers") with protection periods of five days or greater.[4] For NSCC members that hold long positions in securities subject to a tender offer, the System provides members with an increased opportunity to obtain more of those securities. The System does so by putting such members on high priority for allocation of securities and by holding the NSCC members with short positions in those securities liable for failing to deliver. Currently, securities eligible for processing in the CNS System are those securities subject to a tender offer with protect periods of eight days.

NSCC provides up to two reorganization sub-accounts for each security in order to provide protection for up to two competing tender offers for that security.[5] If there are more than two tender offers for a security, all positions in the security not previously moved to a sub-account are removed from the CNS System and balance orders are produced. Four days after the expiration date of the tender offer (*i.e.*, "E+4"), members with long CNS positions in a security subject to a tender offer may submit a Letter of Liability to NSCC instructing NSCC to move those positions to a reorganization sub-account. On E+5, NSCC issues Potential Liability Reports to members with the oldest short positions advising these members of their potential liability for the tender value. After the day cycle on E+5, NSCC moves long positions for which it has received Letters of Liability into the sub-account. Concurrently, NSCC moves a corresponding number of short positions into the sub-account.

Between E+5 and the end of the protect period, regular CNS allocation occurs with the long positions in the sub-account assigned the highest priority for allocation. In addition, on E+6 and each day thereafter until payable date, NSCC marks each short position to the tender offer price. Upon completion of the tender offer, members with long positions are credited, and members with short positions are debited for the securities and/or cash under the terms of the tender offer.

When NSCC implemented the System in 1987,[6] it limited processing to accommodate tender offers with eight day protect periods because most of the tender offers at that time had eight day protect periods. NSCC since has recognized that there have been an increased number of tender offers with protect periods of five days or greater that could benefit from the System. To accommodate these tender offers, NSCC is proposing the following specific changes to the System:[7]

1. The ability to submit adjustment input in the form of an add instruction or a withdrawal instruction will not be available for tender offers with five day protect periods.

2. CNS allocations will occur from E+5 until the day cycle of the last day of the protect period no matter whether the protect period is five or eight days.

3. Potential Liability Reports will be issued one day earlier (*i.e.*, on E+4). This change will enable members with short positions to receive earlier notification of their potential liability.

4. Members who contact each other directly and arrange for delivery of securities themselves will be able to notify NSCC of such delivery by submitting a CNS exit request form to NSCC. If delivery is made outside the System without NSCC being so notified, the short member's account will automatically be debited for the cash or securities under the terms of the tender offer.

5. A technical change is being made to provide that the reorganization information will no longer appear on the CNS Projection Report but will appear on a separate Reorganization Information Report.

6. NSCC will modify the Automated Customer Account Transfer ("ACAT") Service in order to provide that securities subject to a tender offer will be deemed non-CNS eligible for ACAT processing.[8]

7. NSCC will amend its Automated Stock Borrowing Procedure to preclude borrowing from participants securities undergoing a voluntary tender offer after the nighttime allocation on E+2 until the end of the protect period.[9]

II. Discussion

The Commission believes that the proposal is consistent with the Act, particularly section 17A of the Act. Section 17A(a)(1) of the Act encourages efficient, effective, and safe procedures for securities clearance and settlement, particularly by the use of automation.[10] Moreover, section 17A(b)(3)(F) of the Act requires the rules (including procedures) of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of funds in the control of clearing agencies.[11]

The Commission also believes for several reasons that the proposed rule change will promote the prompt and accurate clearance and settlement of securities transactions. First, participants will be afforded the benefits of the netting process when reorganizations are processed through the CNS System. This, among other advantages, will reduce the number of actual settlements required and, accordingly, will lower clearing expenses for participants. Second, the CNS System provides automatic book-entry delivery or receipt of the securities versus money settlement at the Depository Trust Company ("DTC"), a procedure that is more efficient, more secure, and less prone to error than other depository deliveries or physical delivery of the securities. Third, as a general matter, an automated environment for clearance and settlement will reduce processing expenses per transaction.

The Commission believes that the proposal will help assure the safeguarding of securities and funds in NSCC's control or for which NSCC is responsible. Inasmuch as NSCC rules require participants to settle CNS delivery obligations by book-entry movement at DTC, rather than by physical delivery of certificates, the proposal should reduce the risk of loss that can result from physical delivery.[12]

The Commission further believes that this proposal by NSCC is responsive to a 1983 Commission directive to NSCC to provide a full range of automated, centralized services for securities subject to reorganizations.[13]

NSCC has requested that the Commission find good cause for approving the proposed rule change

[4] The filing defines "protect period" or "protection period" as the amount of time after the expiration of a tender offer that the owner or record holder, who has elected to participate in the tender, has to submit the shares to the tender agent to cover his position.

[5] NSCC procedures governing CNS sub-accounts are set forth in NSCC's Procedures, § VII.I, p. 54–55 (rev. ed., Jan. 30, 1991).

[6] Securities Exchange Act Release No. 24365, *supra* note 2.

[7] Unless otherwise noted, the modifications are reflected in changes to NSCC Procedures, § VII.H.4. (Corporate Reorganizations) (rev. ed. Jan. 30, 1991).

[8] The ACAT Service is an industry-wide service that assists broker-dealers in transferring assets in connection with the transfer of customer accounts between broker-dealers. NSCC Rule 50, § 10 (ACAT Service), pp. 108–115 (rev. ed. Jan. 30, 1991).

[9] NSCC Procedures, Addendum C (NSCC Automated Stock Borrow Procedures) (rev. ed. Jan. 30, 1991).

[10] 15 USC 17q–1(a)(1).

[11] 15 USC 78q–1(b)(3)(F).

[12] NSCC Rules, Rule 11, section 3, pp. 37–38 (rev. ed., Jan. 30, 1991).

[13] Securities Exchange Act Release No. 19678 (April 5, 1983), 48 FR 17603

prior to the thirtieth day after the date of publication of notice of the filing. Such accelerated approval would permit NSCC both to begin operating the System with the proposed enhancements according to schedule and to notify their members in a timely manner prior to the actual institution of the modifications to the System. The Commission regards the proposal as one that (1) will provide substantial benefits and added efficiency to the national clearance and settlement system, (2) furthers, as explained above, a long standing goal of the Commission,[14] and (3) is not controversial and is not expected to be the subject of numerous comment letters. The Commission believes good cause exists under section 19(b)(2) of the Act for approving the proposal prior to the thirtieth day after publication of the notice.

III. Conclusion

For the reasons discussed in this order, the Commission believes that the proposal is consistent with the requirements of the Act, particularly Section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change (SR–NSCC–90–24) be, and hereby is, approved.

By the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–10048 Filed 4–26–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–29110; File No. SR–NYSE–90–20]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Rule 113—Specialists' Public Customers

On April 17, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rule 113(b) in order to delete the current identification requirement for proprietary orders in a specialty stock received by a specialist from an affiliate to provide that such orders need not be identified if received by the specialist by means of the Exchange's automated order routing systems.

The proposed rule change was noticed in Securities Exchange Act Release No. 28084 (June 1, 1990), 55 FR 23496 (June 8, 1990). No comments were received on the proposal.

NYSE Rule 113(b) currently provides that orders in a specialty stock for the specialist, for specified individuals associated with a specialist, and for approved persons (*i.e.*, entities in a control relationship with a specialist) must be identified when they are left with the specialist. If an order is not for one of these accounts, it may not be identified. The order identification requirement of NYSE Rule 113(b) facilitates specialist compliance with the provisions of NYSE Rule 92, a rule which prohibits a member from trading for his own account or for the account of an affiliated individual or entity while he holds or knows that his member organization holds a customer order capable of execution at the same price or better. Essentially, NYSE Rule 92 was designed to ensure that an Exchange member does not give preferential treatment to an order for an affiliate over an order for a customer. Consequently, NYSE Rule 113(b), by requiring order identification, ensures that a specialist knows which orders given to him are affiliate orders and enables him to comply with Rule 92.

Currently, Exchange automated order routing systems do not allow for order identification by account type. Account type indicators are "stripped" at the Common Message Switch before an order is received by the specialist. Thus, as a practical matter, it is not possible, because of system constraints, for affiliates of a specialist to comply with the order identification requirement of NYSE Rule 113(b) for systematized orders.

The Exchange estimates that a significant expenditure would be required in order to make the necessary system enhancements that would allow the identification of orders of an affiliate.[3] The Exchange believes that such an expenditure does not appear cost-justified when weighed against the overall purposes of NYSE Rules 113(b) and 92.

The Exchange proposes, therefore, to delete the order identification requirement contained in NYSE Rule 113(b) for orders in a specialty stock given to a specialist by an affiliate if received by the specialist by means of an Exchange automated order routing system. Because there are no account type indicators on systematized orders, the specialist cannot know that a systematized order is a proprietary order for the account of an affiliate. Thus, there is no possibility that the specialist could give preferential treatment to that order ahead of other orders in violation of Rule 92.

After careful consideration, the Commission has determined that the proposed amendment to NYSE Rule 113(b) is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes that the proposed rule change is consistent with sections 6(b)(5) and 6(b)(1) [4] and Rule 11b-1 [5] under the Act for the following reasons.

The Commission believes that the proposed rule change is consistent with the section 6(b)(5) requirement that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to facilitate transactions in securities, and, in general, to protect investors and the public interest. The proposed rule change is consistent with section 6(b)(5) in that it allows the facilitation of transactions in securities by means of the NYSE's automated order routing systems while still maintaining the effectiveness of NYSE Rule 113(b).

In addition, the Commission believes that the proposal is consistent with the section 6(b)(1) requirement that the Exchange have the capacity to enforce compliance by its members, and persons associated with its members, with the rules of the Exchange. As stated previously, Exchange Rule 92 prohibits a member from trading for his own account or for the account of an affiliated individual or entity while he holds or knows that his member holds a customer order capable of execution at the same price or better. Rule 113(b) was adopted, therefore, to help secure compliance with Exchange Rule 92 by ensuring that the specialist had the requisite knowledge of the type of accounts held by individuals and entities affiliated with him. Because there are no account type indicators on systematized orders, however, NYSE Rule 113(b), as it relates to orders received by the specialist by means of

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[14] *See supra* note 13 and accompanying text.

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1990).

[3] See letter from Brian M. McNamara, Managing Director, Market Surveillance, NYSE, to Mary N. Revell, Branch Chief, Division of Market Regulation, SEC, dated February 26, 1991.

[4] 15 U.S.C. 78f(b)(5) and (b)(1) (1988).

[5] 17 CFR 240.11b–1 (1990).

the Exchange's automated order routing system, currently is not needed to enforce specialist compliance with Exchange Rule 92.

Finally, the Commission finds that the proposal is consistent with Rule 11b–1 under the Act. Specifically, the Commission believes the proposal is consistent with Rule 11b–1(a)(2) which requires that the rules of an exchange provide provisions which state the responsibilities of a specialist acting as a broker in securities in which he is registered. By providing provisions which relate to specialists who accept orders for both customers and individuals or entities affiliated with the specialist, Exchange Rule 92 fulfills the Exchange's obligation with regard to Rule 11b–1(a)(2). Moreover, because the NYSE's automated order routing systems do not provide for identification by account type, the proposed amendment to NYSE Rule 113(b) does not impede the effectiveness of current NYSE Rule 113(b). The proposal, therefore, has no impact upon the actual responsibilities of a specialist, as set forth in NYSE Rule 92, when acting in his capacity as a broker.[6]

To summarize, NYSE Rule 113(b) was designed to provide specialists with the knowledge needed to guard against a violation of NYSE Rule 92. The potential for any fraudulent or manipulative act in violation of NYSE Rule 92 is lessened, however, given the fact that the NYSE's automated order routing systems do not provide identification by account type. Thus, a specialist does not know whether orders that were routed over automated systems are firm proprietary or customer orders. Given the significant expenditures required to modify the Exchange's automated routing system to allow identification of affiliated orders, as represented by the NYSE,[7] and the fact that the Rule 92 protections are not jeopardized by the proposed rule change, the Commission believes that the proposed rule change is consistent with sections 6(b)(1) and 6(b)(5) and Rule 11b–1 of the Act.

It is therefore ordered, pursuant to section 19(b)(2) [8] of the Act, that the proposed rule change be, and hereby is, approved.

[6] The Commission also notes that this proposal has no effect on the Rule 92 requirement that a non-specialist member must refrain from trading for his own account or for the account of an affiliate while he holds or knows that his member organization holds a customer order capable of execution at the same price or better.

[7] See note 3, *supra.*

[8] 15 U.S.C. 78s(b)(2) (1988).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Dated: April 19, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–10042 Filed 4–26–91; 8:45 am]

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[Release No. 34–29113; File No. SR–NYSE–91–10]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Establishing Usage Fees for the Exchange's Step-Out Service

April 22, 1991.

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 29, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–NYSE–91–10) as described in items I, II, and III below, which items have been prepared by the self-regulatory organization ("SRO"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. SRO's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE is proposing a usage fee for its new electronic service known as the "Step-Out Service." [2] The new service permits all or part of a securities transaction effected on the NYSE floor to be transferred from one clearing firm to another clearing firm's on firms' clearing account(s) prior to clearance and settlement.

[9] 17 CFR 200.30–3(a)(12) (1990).

[1] 15 U.S.C. 78s(b).

[2] The proposed usage fee for the Step-Out Service technically became effective when the proposed rule change (File No. SR–NYSE–91–10) was filed with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act. The companion rule change (File No. SR–NYSE–91–09) that proposes the Step-Out Service, however, was filed by the Exchange pursuant to section 19(b)(2) of the Act. The latter filing has not yet received the Commission approval that is required for proposed rule changes submitted pursuant to section 19(b)(2). Accordingly, the NYSE has assured the Commission that the Step-Out Service will not be put in operation until it receives formal Commission approval under section 19(b)(2) of the Act. Telephone conversation between Dennis Covelli, Vice President, Post Trade Services, NYSE, and Thomas C. Etter, Jr., Attorney, Division of Market Regulation, Commission (April 10, 1991).

II. SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the SRO included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it recevied on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The SRO has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Step-Out Service is a simple, expeditious, and cost effective method whereby all or part of a securities transaction effected on the floor of the Exchange can be transferred electronically from one clearing firm to another clearing firm's or firms' clearing account(s) prior to settlement. This electronic system uses and builds upon a segment of the NYSE's electronic Overnight Comparison System [3] that currently is used to resolve uncompared trades.

The Step-Out Service will be available only for NYSE clearing members. The NYSE currently is charging its clearing firms fees for hardware installation, maintenance, and access for the Exchange's Correction System [4] in accordance with rates contained in the Correction System's 1989 rate schedule.[5] The Exchange plans to charge the same rates for the Step-Out Service, except the usage fee will be reduced form $0.40 to $0.20 per item since only a segment of the entire Overnight Comparison System will be used to operate the Step-Out Service. An NYSE clearing firm desiring to use both the Correction System and the Step-Out Service will be required only to install one terminal system since both services can be obtained from the one system.

[3] For information on the NYSE's Overnight Comparison System, see Securities Exchange Act Release No. 26627 (March 14, 1989), 54 FR 11470 [File No. SR–NYSE–88–36].

[4] For information on the NYSE's Correction System, see Securities Exchange Act Release No. 26773 (May 1, 1989), 54 FR 20227 [File No. SR–NYSE–89–03].

[5] Securities Exchange Act Release No. 26620 (March 9, 1989), 54 FR 10767 [File No. SR–NYSE–89–04].

(2) Statutory Basis Under the Act for the Proposed Rule Change

The basis under the Act for the proposed rule change is Section 6(b)(4) of the Act, which requires that a national securities exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

(B) SRO's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) SRO's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The NYSE has not solicited comments on the proposed rule change and no unsolicited comments have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act [6] and paragraph (e)(2) of Rule 19b–4 under the Act [7] in that it establishes or changes a due, fee, or other charge imposed by the NYSE. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance wtih the provisions of 5 U.S..C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–91–10 and should be submitted by May 20, 1991.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–10043 Filed 4–26–91; 8:45 am]

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[Release No. 34–29111; File No. SR–PHLX–89–48, Amendment 2]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to a Proposed Amendment Regarding its Revised Cash Index Participation Filing

April 19, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 28, 1991, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange hereby submits as proposed rule change the second amendment to SR–PHLX–89–48 regarding its revised Cash Index Participation ("CIP") filing. The text of the rule change, as amended, is attached as exhibit A.

II. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PHLX submitted SR–PHLX–89–48 on August 29, 1989. In this filing, the PHLX proposed to amend its CIP contract to provide that a CIP holder may exercise the cash-out privilege on a daily basis without a penalty and receive the next day's opening index value of the pertinent index.

After consultation with the Stock Clearing Corporation of Philadelphia ("SCCP"), the licensor of the revised CIP contract specifications, it was determined that the proposed instrument's appeal and utility to public investors could be heightened if a holder exercising the cash-out privilege could receive the same day's closing index value. To accomodate this change, the PHLX filed SR–PHLX–89–48, amendment 1 with the Commission on October 18, 1990.

The instant proposed amendment, amendment 2 to SR–PHLX–89–48, establishes a daily exercise cut-off procedure similar to that of certain equity index options and announces that CIP holders exercising the cash-out privilege are entitled to accrued dividend equivalent payments calculated up to the time of the cash-out. With respect to the exercise cut-off amendments, the cut-off time for CIP notices will be 4:15 p.m., Philadelphia time, rather than the 3 p.m., Philadelphia time, cut-off set forth prior to this amendment. The amendment makes clear that it is a PHLX rule that requires exercise decisions to be made by the cut-off time. Accordingly, The Options Clearing Corporation ("OCC") may still have consistent rules which permit the tendering of exercise instructions after 4:15 p.m. so long as the decisions underlying those instructions are made on or before 4:15 p.m.

The 4:15 p.m. exercise cut-off time is compatible with other comparable major market stock options indices expiration cut-off times, including for example the CBOE's daily OEX options exercise instructions cut-off rule. Accordingly, the 4:15 p.m. exercise cutoff time promotes a consistent industry wide standard in order for investors to easily determine and identify a widely recognized exercise cut-off time.

With respect to the dividend equivalent modification, no change will be effected to the procedure of OCC on a quarterly basis crediting and debiting

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[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(e)(2).

[8] 17 CFR 200–30.3(a)(12).

the accounts of CIP record holders and shorts a proportionate amount of any regular cash dividend equivalents derived from ex-dividend information of securities underlying and pertinent CIP index made public during the quarter.

Accordingly, any CIP holder who is long at the end of trading on the third Thursday of March, June, September and December ("Quarterly Thursday") is entitled to receive an accrued dividend equivalent payment based on the entire quarter. In this regard, a CIP holder selling his CIPs on a quarterly Thursday is not entitled to such accrued dividend equivalent payment; rather his purchaser will instead receive this payment. Additionally, a CIP holder who exercises the cash-out privilege on the Quarterly Thursday will also receive the accrued dividend equivalent payment based upon the entire quarter. The rationale for this entitlement is based upon the fact that all exercise instructions are processed after the close of trading and therefore the exercising CIP holder is technically still long at the close of trading on the Quarterly Thursday.

The current amendment establishes the additional right of a CIP holder exercising the cash-out privilege on any day within the quarter to receive the dividend equivalent value accrued since the end of the previous quarter. For example, a CIP holder exercising the cash-out privilege on the next business day following a Quarterly Thursday would be entitled to any dividend equivalent value accrued for the first day of the new quarter assuming that an issuer or issuers of a security or securities had paid a dividend or dividends on that day.

The accrued dividend equivalent will be calculated as follows. On the ex-dividend date for each component security in the pertinent stock index an amount representing the dividend for that security, adjusted to reflect the relative weight of the security in the pertinent stock index, will be added to the dividend equivalent for the quarter. The calculation of the accrued dividend equivalent will be performed by PHLX or a processor selected by PHLX. The calculations performed by the PHLX and/or its procesor will be deemed final for purposes of OCC paying out accrued dividend equivalents reflecting daily cash-outs as well as payments of the dividend equivalent to those holding CIP long positions held at the close of trading on a given Quarterly Thursday.

This amendment, coupled with the revised CIP daily cash-out privilege, at no discount, will assure that CIP pricing stays in lockstep with the current or spot value of the underlying stock index. Accordingly, the amendment should create a more attractive product for investors, and assure that the revised CIP instrument is analyzed as a spot security having none of the pricing characteristics of a futures contract.

The proposed rule change is consistent with section 3(a)(10) delineating the instruments that constitute securities and section 6(b)(5) of the Exchange Act, which provides in pertinent part that the rules of the exchange are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. The proposal, if approved, also assures the removal of impediments to and the perfection of the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest.

B Self-Regualtory Organiztion's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The PHLX has prepared this rule change in close coordination with OCC and the SCCP.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the PHLX consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–PHLX–89–48 and should be submitted by May 20, 1991.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

Exhibit A

The following text assumes that the revisions made in SR–PHLX–89–48, amendment 1, as filed on October 18, 1990, are incorporated. Accordingly, only the revisions made pursuant to this filing are denoted with new text italicized and deleted text bracketed:

Accrued Dividend Equivalent Calculation

Rule 1002B–1. The accrued dividend equivalent in respect to a particular CIP index shall be calculated as follows. On the ex-dividend date for each component security an amount representing the ordinary cash dividend or distribution for that security, adjusted to reflect the relative weight of the security in the index, will be added to the dividend equivalent for that quarter. The dividend equivalent for a quarter shall accrue from the third Friday of December, March, June and September and the accrual shall end on the respective following third Thursday of March, June, September and December. The calculation of the accrued dividend equivalent will be performed each business day by the Exchange and/or the reporting authority. The calculations performed by the Exchange and/or the reporting authority shall be deemed final for purposes of any CIP dividend equivalent payment entitlement. In this regard, a holder of the CIP at the end of a quarter shall receive an accrued dividend equivalent based on the entire quarter in accordance with rules of The Options Clearing Corporation.

. . .Commentary

.01 For purposes of rule 1002B–1, the term "ordinary cash dividend or distribution" means a cash dividend or distribution in an aggregate amount which does not exceed 10% of the market value (as of the ex-dividend date) of the underlying security outstanding. The Exchange will determine on a case-by-case basis whether other cash dividends or distributions are "ordinary cash dividends or distributions."

* * * * *

Cash-Out Privilege

Rule 1004B. The purchaser of a CIP may exercise the CIP cash-out privilege at any time after establishing a CIP position. Exercise of the CIP cash-out privilege entitles the holder of a long CIP position to obtain the CIP closing index value *plus any accrued dividend equivalent value* as specified in rule 1008B relating to exercise of the cash-out privilege.

* * * * *

Exercise of Cash-Out Privilege

Rule 1008B. (a) Exercise of the cash-out privilege shall entitle the holder of the CIP to receive: *(1)* The CIP index value as calculated at the close of trading on the same business day as the date of the exercise of the cash-out privilege *and (2) the accrued dividend equivalent value as calculated pursuant to rule 1002B–1.*

(b) The text of this part is to be withdrawn and replaced by the following text (all of which is new):

(b) The decision and written evidence of such to exercise the CIP Cash-Out privilege by a purchaser of a CIP must be made no later than 4:15 p.m., Philadelphia time, to be effective for the date on which the exercise is made. Additionally, 4:15 p.m., Philadelphia time, shall be the latest time at which an exercise instruction may be (1) Accepted by a clearing member organization from a non-clearing member, or (2) accepted by a member organization from any customer.

The term "exercise instruction" means also an instruction to cancel an exercise instruction previously submitted. All exercise instructions must be time stamped at the time they are prepared by the receiving member organization.

Notwithstanding the foregoing, member organizations may receive exercise instructions after 4:15 p.m., Philadelphia time, but prior to any cut-off times imposed by The Options Clearing Corporation (i) In order to remedy mistakes made in good faith, (ii) to take appropriate action as the result of a failure to reconcile unmatched Exchange CIP transactions, or (iii) where exceptional circumstances relating to a customer's ability to communicate exercise instructions to the member organization (or the member organization's ability to receive exercise instructions) prior to such time warrant such action.

Notice of exercise of the CIP Cash-Out privilege must be provided by a purchaser of a CIP in accordance with the rules and procedures of The Options Clearing Corporation. An exercise notice may be tendered to The Options Clearing Corporation only by the clearing member in whose account with The Options Clearing Corporation the CIP is carried. Members and member organizations, to the extent that they do not conflict with the rules and procedures of the Exchange and The Options Clearing Corporation, shall establish fixed procedures as to the latest hour at which they will accept exercise notices from their customers.

Rule 1008B–1. No change.

[FR Doc. 91–10045 Filed 4–26–91; 8:45 am]
BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 18109; International Series [Rel. No. 262; 812–7709]

Global Income Plus Fund, Inc., et al.; Notice of Application

April 22, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: Global Income Plus Fund, Inc., PaineWebber America Fund, PaineWebber Atlas Fund, PaineWebber Classic Flexible Income Fund, Inc., PaineWebber Classic Regional Financial Fund, Inc., PaineWebber Fixed Income Portfolios, PaineWebber Investment Series, Inc., PaineWebber Master Series, Inc., PaineWebber Olympus Fund, PaineWebber Series Trust.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of section 12(d)(3) and rule 12d3–1.

SUMMARY OF APPLICATION: Applicants seek a conditional order permitting applicants to invest in equity or convertible debt securities of foreign issuers that, in each of their most recent fiscal years, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter, or investment adviser ("foreign securities companies"), provided that these investments meet the conditions in proposed amended rule 12d3–1.

FILING DATE: The application was filed on April 10, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 20, 1991, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington DC 20549. Applicants, 1285 Avenue of the Americas, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, at (202) 272–2190, or Jeremy N. Rubenstein, Branch Chief, at (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Each applicant is a management investment company registered under the Act. Mitchell Hutchins Asset Management Inc. ("Mitchell Hutchins") serves as investment adviser for each of the applicants.

2. Applicants request that any relief given pursuant to the application apply to any other registered investment company or series thereof that in the future is advised by Mitchell Hutchins or its parent, PaineWebber Inc., or for which Mitchell Hutchins or PaineWebber Inc. serve as principal underwriter.

3. Applicants wish to invest in foreign issuers that, in their most recent fiscal year, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter, or investment adviser.

4. Applicants seek relief from section 12(d)(3) of the Act and rule 12d3–1 thereunder to invest in securities of foreign securities companies to the extent allowed in the proposed amendments to rule 12d3–1 ("Proposed Amendments"). *See* Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989). Applicants' proposed acquisitions of securities issued by foreign securities companies will satisfy each of the requirements of the Proposed Amendments.

Applicants' Legal Conclusions

1. Section 12(d)(3) of the Act prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3–1 under the Act provides an exemption from section 12(d)(3) for investment companies acquiring securities of an issuer that derived more than 15% of its gross revenues in its most recent fiscal year from securities-related activities, provided the acquisitions satisfy certain conditions set forth in the rule. Subparagraph (b)(4) of rule 12d3–1 provides that "any equity security of the issuer * * * [must be] a 'margin security' as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System." "Margin security" status is, generally speaking, available only to securities traded in

United States markets.[1] Accordingly, applicants seek an exemption from the "margin security" requirement of rule 12d3–1.

2. The Proposed Amendments provide that the "margin security" requirement would be excused if the acquiring company purchases the equity securities of foreign securities companies that meet criteria comparable to those applicable to equity securities of United States securities-related businesses. The criteria, as set forth in the Proposed Amendments, "are based particularly on the policies that underlie the requirements for inclusion on the list of over-the-counter margin stocks." Investment Company Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989).

Applicants' Condition

Applicants agree to the following condition in connection with the relief requested:

Applicants will comply with the provisions of the proposed amendments to rule 12d3–1 (Investment Company Act Release No. 17096 (August 3, 1989); 54 FR 33027 (August 11, 1989)), and as such amendments may be reproposed, adopted or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–10046 Filed 4–26–91; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18107; 811–5345]

Orange County Growth Fund; Application for Deregistration

April 19, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Orange County Growth Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: The Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N–8F was filed on January 23, 1991 and amended on March 11, 1991 and April 10, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving the Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 16, 1991 and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 3151 Airway Avenue, Suite H–1, Costa Mesa, California 92626.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504–2263, or Max Berueffy, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Applicant was organized as a Massachusetts business trust and is registered under the Act as an open-end diversified management investment company. On September 24, 1987, the Applicant filed a registration statement pursuant to Section 8(b) of the Act. On the same date, the Applicant filed a registration statement on Form N–1A under the Securities Act of 1933, which became effective on March 23, 1988.

2. At a meeting held on December 5, 1990, the Applicant's board of trustees adopted a plan of termination under which the Applicant would convert its assets into cash and then make a liquidating distribution to its shareholders. On December 12, 1990, the Applicant sent its shareholders a letter informing them of the board's decision. In response to the letter, 102 of the Applicant's 131 shareholders voluntarily redeemed their shares, for which they received the then current net asset value of between $6.03 and $6.06 per share.

3. Proxy materials, which were filed with the SEC, were distributed to shareholders on January 9, 1991. At a shareholder meeting held on January 17, 1991, 9 shareholder accounts were represented in person or by proxy. These 9 shareholder accounts represented 81.6% of the Applicant's remaining shares and all 9 approved the plan of termination. Fourteen shareholders were not represented in the vote because they failed to respond to the proxy solicitation.

4. On January 18, 1991, 19 of the remaining 23 shareholders received liquidating distributions that totaled $25,319 or $6.06 per share. On January 23, 1991, 3 of the remaining 4 shareholders received liquidation distributions totalling $48,754 or $6.06 per share. The delay in distribution to these 3 shareholders was due to a processing error by the Applicant's shareholder service agent.

5. Following the January 23, 1991 distributions, the Applicant's sole shareholder was its original shareholder, who held 13,169 shares with an aggregate value of $79,740. Since that time, the value of the original shareholder's account has dropped to $38,514. This decline in value was due, in part, to the fact that the original shareholder reimbursed to all former shareholders a total of $23,308 for amortized organizational expenses recognized since the Applicant's inception. The rest of the decline was caused by the original shareholder's paying certain administrative and legal expenses.

6. All expenses related to the termination have been or will be borne by the Applicant's manager, Newport Securities Corporation.

7. The Applicant is not a party to any litigation or administrative proceeding. The Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–10047 Filed 4–26–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25299]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

April 19, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to

[1] The Board of Governors of the Federal Reserve System recently amended Regulation T to include "foreign margin stock[s]." However, because the requirements for inclusion on the Board's "List of Foreign Margin Stocks" are generally more restrictive than the requirements for a "margin security" traded in the United States markets, securities issued by many foreign securities firms are not included in the definition of "foreign margin stocks" under Regulation T. See 12 CFR § 220.2(i) and (q)(6).

provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing of the application(s) and/or declaration(s) should submit their views in writing by May 13, 1991 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Columbus Southern Power Company, et al. (70–7491)

Columbus Southern Power Company ("CSP"), 215 North Front Street, Columbus, Ohio 43215 and American Electric Power Service Company ("AEPSC"), 1 Riverside Plaza, Columbus, Ohio 43215, subsidiaries of American Electric Power Company, Inc. ("AEP"), a registered holding company, have filed a post-effective amendment under sections 9, 10, 12b, 12(f), 13(b) and 13(f) of the Act and Rules 45, 90, 91 and 95 thereunder to the declaration filed solely by CSP under Sections 12(b) and 12(f) of the Act and Rule 45 thereunder.

CSP, The Cincinnati Gas and Electric Company ("CG&E") and The Dayton Power and Light Company ("DP&L") ("Owners"), all unaffiliated public utility companies, are joint-owners of the Zimmer Generating Station ("Zimmer") located in Moscow, Ohio. Zimmer was originally planned as a nuclear generating unit with CSP, CG&E and DP&L owning 28.5%, 40%, and 31.5%, respectively. After encountering a variety of difficulties, the Owners agreed, pursuant to a Settlement Agreement, to convert Zimmer from a nuclear unit to a coal-fired station. The Settlement Agreement also provided that the ownership interests of the Owners be changed from the original ownership interests to 25.4%, 46.5% and 28.1% for CSP, CG&E and DP&L, respectively. By order dated January 16, 1985 (HCAR No. 23574) in S.E.C. File No. 70–7057, the Commission approved the sale of part of CSP's ownership interest in Zimmer. By subsequent order dated March 9, 1988 (HCAR No. 24595) in this file, the Commission authorized CSP, along with CG&E and DP&L, to indemnify AEPSC against all liability in any way attributable to or arising out of a certain Project Management Agreement, a Training Services Contract, or the sale of any goods or services arising out of the conversion of Zimmer.

In anticipation of a March 31, 1991 completion date for Zimmer's conversion and its expected commercial operation, the Owners have determined that AEPSC should provide certain services relating to the operation and maintenance of Zimmer following its commercial operation date. In this regard, CSP and AEPSC request authority to consummate a Services Agreement ("Services Agreement"), entered into on February 11, 1991, subject to Commission approval, among the Owners and AEPSC. Under the Services Agreement, AEPSC will provide the services and CSP, along with CG&E and DP&L, will indemnify AEPSC, and its associated companies, in proportion to the Owner's undivided interests Zimmer, against all costs, liabilities or damages arising under the Services Agreement.

The Services Agreement provides that AEPSC will provide the following services: (1) Routine maintenance and production of documents and reports pursuant to an Operation Agreement among the Owners dated October 22, 1986; (2) engineering, design, and management services on a case-by-case basis within a defined scope of work as requested by the Owners; (3) services of the Central Machine Shop owned by Appalachian Power Company, an associate company of CSP and AEPSC, for the repair of Zimmer components; (4) access to AEP System's 1300–MW series spare parts at replacement costs; and (5) access to a 1300–MW Unit Simulator owned jointly by two associate companies of CSP and AEPSC, and located in St. Albany, West Virginia, for training services. All of these services will be provided at cost in accordance with Section 13(b) of the Act and the relevant rules thereunder, except that spare parts shall be sold to the Owners at the then replacement price. Replacement price is defined in the Services Agreement as the market price at which the parts could be purchased from a recognized vendor of such parts, plus additional reasonable costs anticipated to be incurred if the part were replaced at the time it is sold to the Owners. CSP and AEPSC have requested that the Commission exempt, pursuant to part (2) of the last sentence of Section 13(b), the sale of AEP System 1300–MW series spare parts at replacement cost from the "at cost" standard of Section 13(b) of the Act.

The Potomac Edison Company (70–7793)

The Potomac Edison Company ("Potomac"), Downsville Pike, Hagerstown, Maryland 21740, an electric public-utility subsidiary company of Allegheny Power System, Inc., a registered holding company, has filed an application under Section 9(c)(3) of the Act.

Potomac proposes to subscribe to and acquire 100 shares, at a total purchase price of $100,000, of class A voting common stock of the Virginia Economic Development Corporation ("VEDCORP"). VEDCORP, a for-profit corporation, was created to make investments in small rural Virginia firms in order to stimulate and promote economic growth and retain jobs. The Commonwealth of Virginia will hold the class B stock of VEDCORP and is entitled to elect two of its eleven member Board of Directors.

Potomac will not be represented on the Board and will not otherwise seek to exercise influence over VEDCORP. In addition, Potomac will own less than 5% of the outstanding common stock of VEDCORP.

Eastern Utilities Associates, et al., (70–7630)

Ocean State Power I ("OSP I") and Ocean State Power II ("OSP II"), both located at One Bowdoin Square, Boston, Massachusetts 02114, general partnerships and subsidiaries of EUA Ocean State Corporation ("EUA–OS"), Washington Highway, Lincoln, Rhode Island 02865, and Narragansett Energy Resources Company ("NERC"), 280 Melrose Street, Providence, Rhode Island 02901, and their respective indirect and direct parent companies, Eastern Utilities Associates ("EUA"), One Liberty Square, Boston, Massachusetts 02107 and New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts 01582, EUA Service Corporation, 750 West Center Street, West Bridgewater, Massachusetts 02379, and New England Power Service Company, 25 Research Drive, Westborough, Massachusetts 01582, service company subsidiaries of EUA and NEES, respectively, Blackstone Valley Electric Company,

Washington Highway, Lincoln, Rhode Island 02865, an electric utility subsidiary of EUA; TransCanada PipeLines Limited, 54 Commerce Court West, Toronto, Ontario M5L 1C2, Canada, and its indirect subsidiary, TCPL Power Ltd., 123 Dyer Street, Providence, Rhode Island 02903, an affiliate of OSP I and OSP II, have filed a post-effective amendment under Sections 12(b) and 12(f) of the Act and Rule 45 thereunder to their joint application-declaration filed under sections 6(a), 7, 9(a), 10, 12(b), 12(d), 12(f), 13(b), and 13(e) of the Act and Rules 43, 44, 45, 50(a)(5), 90, 91 and 95 thereunder.

By orders dated October 13, 1988 (HCAR No. 24727), December 23, 1988 (HCAR No. 24790), September 28, 1989 (HCAR No. 24960) and December 18, 1990 (HCAR No. 25217), the Commission authorized, among other things, certain transactions with respect to Unit I and Unit II of the Ocean State Power Project ("Project"), a combined cycle electric generating facility located in Rhode Island, which included: (1) The formation by EUA and NEES of new subsidiary companies, EUA–OS and NERC, respectively; (2) the respective acquisition by EUA–OS and NERC of 29.9% and 20% equity interests in each of two partnerships, OSP I and OSP II, formed to own and operate Unit I and Unit II of the Project for aggregate investment amounts of $71.27 million and $50 million; (3) the funding of EUA and NEES of EUA–OS and NERC to enable them to meet their obligations to make capital contributions to OSP I and OSP II in the same aggregate investment amounts; and (4) the financing of 100% of the construction of each of the units through non-resource loans under separate general construction-loan credit facilities.

A notice of the filing of a prior post-effective amendment was issued by the Commission on February 22, 1991 (HCAR No. 25262). In that filing EUA–OS and NERC proposed to distribute to EAU and NEES, respectively, capital which had been returned to them by OSP II as the Project was depreciated. The capital will be returned through repurchases of common stock or the payment of dividends out of capital. EUA–OS and NERC further proposed to make additional capital contributions to their subsidiary OSP II to satisfy rate refund obligations that OSP II may incur.

By this post-effective amendment, OSP I, OSP II and Blackstone seek authority to enter into an easement agreement ("Easement Agreement") in order for OSP I and OSP II to acquire, and for Blackstone to grant, an easement ("Easement") in certain property owned by Blackstone, and for OSP I and OSP II reimburse Blackstone for any fees and expenses, and to indemnify Blackstone for any liability incurred in connection with the Easement.

Under the Easement Agreement, Blackstone will grant to OSP I and OSP II an easement in certain property adjacent to the Project site which Blackstone owns and on which a portion of the Project common to both OSP I and OSP II was inadvertently built. The Easement encompasses approximately one-third of an acre, and consists of the land on which a detention pond is located and a buffer area. The total area devoted to the detention pond, including that portion of the pond and buffer area located on the Unit 1 site and that portion located on the Blackstone property, is approximately an acre. In order to avoid the cost and delay which moving the detention pond entirely onto OSP I's property would entail, Blackstone, OSP I and OSP II have agreed to enter into the Easement Agreement.

In consideration for the grant of the Easement, the Easement Agreement provides that OSP I and OSP II will pay Blackstone's transaction costs involved in granting the Easement, and will indemnify Blackstone for any claims or liabilities arising from or out of the proposed Easement, thereby leaving Blackstone in essentially the same position it would have been had no portion of the detention pond been constructed on Blackstone's side of the property line. Pursuant to the proposed Easement Agreement, OSP I and OSP II will each pay one-half of Blackstone's transaction costs and will be jointly and severally obligated to indemnify Blackstone for any costs Blackstone incurs as a result of the encroachment.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–10049 Filed 4–26–91; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 01/01–0299]

Boston Hambro Capital Corp.; License Surrender

Notice is hereby given that Boston Hambro Capital Corporation, 160 State Street, Boston, MA 02109 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Boston Hambro Capital Corporation, was licensed by the Small Business Administration on January 4, 1980.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on February 12, 1991, and accordingly, all rights privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 22, 1991.

Bernard Kulik,

Associate Administrator for Investment.

[FR Doc. 91–10004 Filed 4–26–91; 8:45 am]

BILLING CODE 8025–01–M

Region IX Regional Advisory Council; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Los Angeles, will hold a public meeting at 11 a.m. on Thursday, June 13, 1991, at the Verdugo Club, 400 West Glenoaks Boulevard, Glendale, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call M. Hawley Smith, District Director, U.S. Small Business Administration, 330 N. Brand Blvd., suite 1200, Glendale, California 91203, telephone (213) 894–2977.

Dated: April 22, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91–10002 Filed 4–26–91; 8:45 am]

BILLING CODE 8025–01–M

Region I Advisory Council; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Hartford, will hold a public meeting at 8:30 a.m. on Monday, June 10, 1991, at the Days Inn, 900 East Main Street, Meriden, Connecticut, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Michael P. McHale, District Director,

U.S. Small Business Administration, 330 Main Street, Hartford, Connecticut, telephone (203) 240–4670.

Dated: April 22, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91–10003 Filed 4–26–91; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Bureau of Politico-Military Affairs

[Public Notice 1379]

Reinstatement of Suspended Munitions Export Licenses for Kuwait

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that licenses and approvals to export or transfer defense articles to the Government of Kuwait, suspended in August 1990, have been reinstated. Applications for such licenses and approvals are once again being accepted and reviewed by the Office of Defense Trade Controls on a case-by-case basis.

EFFECTIVE DATE: March 25, 1991.

FOR FURTHER INFORMATION CONTACT: Rose Biancaniello, Chief, Licensing Division, Office of Defense Trade Controls, Bureau of Politico-Military Affairs, Department of State (703) 875–6644.

SUPPLEMENTARY INFORMATION: U.S. manufacturers, exporters and other affected parties are hereby notified that the Department of State has reinstated all licenses and approvals to export or otherwise transfer defense articles and services to the Government of Kuwait that were suspended following Iraq's August 2, 1990 invasion of that country (55 FR 31808, Aug. 3, 1990).

Licenses or other approvals destined for Kuwait but with end-users other than the Government of Kuwait, should be resubmitted for approval to the Office of Defense Trade Controls.

In addition, new applications to export or otherwise transfer defense articles and services to Kuwait are once again being accepted and reviewed on a case by case basis.

These actions have been taken pursuant to section 38 of the Arms Export Control Act (22 U.S.C. 2778) in furtherance of the foreign policy of the United States.

Dated: April 18, 1991.

Richard A. Clarke,

Assistant Secretary, Bureau of Politico-Military Affairs.

[FR Doc. 91–9976 Filed 4–26–91; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements filed during the Week Ended April 19, 1991.

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47510.

Date filed: April 19, 1991.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 482 (Fares from Angola).

Proposed Effective Date: May 1, 1991.

Phillis T. Kaylor,

Chief Documentary Services Division.

[FR Doc. 91–9940 Filed 4–26–91; 8:45 am]

BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended April 19, 1991

The following applications for certificates of public convenience and necessity and foregn air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47504.

Date filed: April 16, 1991.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 14, 1991.

Description: Application of HCL Aviation, Inc. d/b/a AV Atlantic, pursuant to section 401(d)(3) of the Act and subpart Q of the Regulations, requests a certificate of public convenience and necessity authorizing interstate, intrastate and overseas charter air transportation.

Docket Number: 47505.

Date filed: April 16, 1991.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 14, 1991.

Description: Application of HCL Aviation, Inc. d/b/a AV Atlantic, pursuant to section 401(d)(3) of the Act and subpart Q of the Regulations requests a certificate of public convenience and necessity authorizing foreign charter air transportation of persons and property between any point in any State in the United States or the District of Columbia, or any territory or possession of the United States, and Europe, Mexico, Caribbean, Far East, South America and the Middle East.

Docket Number: 47506.

Date filed: April 18, 1991.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 16, 1991.

Description: Application of TNT SAVA Servicios Aereos do Vale Amazonico S.A., pursuant to section 402 of the Act and subpart Q of the Regulations, applies for a foreign air carrier permit authorizing the carriage of property and mail on a charter basis between a point or points in Brazil and a point or points in the United States.

Docket Number: 47352.

Date filed: April 15, 1991.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 13, 1991.

Description: Second Amendment to Application of Air Aruba, N.V., pursuant to section 402 of the Act and subpart Q of the Regulations, requests addition of the following segments to the requested foreign air carrier permit: (iv) Between Aruba and Curacao and New York/Newark and (v) Between Aruba and Bonaire and New York/Newark.

Phillis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91–9939 Filed 4–26–91; 8:45 am]

BILLING CODE 4910–62–M

Federal Highway Administration

Environmental Impact Statement: Dare County, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project to replace the existing Herbert C. Bonner bridge with a new facility crossing Oregon Inlet in Dare County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Nicholas L. Graf, P.E., Division Administrator, Federal Highway Administration, Post Office Box 26806, Raleigh, North Carolina 27611. Telephone: (919) 856–4330.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to replace the Herbert C. Bonner Bridge across Oregon Inlet with a new crossing. The proposed improvement would involve a replacement facility and the demolition of the existing bridge.

The Bonner Bridge provides the principal means of access to Hatteras Island. A replacement facility is considered necessary because the existing bridge has a remaining service life of approximately 8 to 12 years. Maintenance costs are projected to become excessive. As the population and tourism increase, emergency evacuation will become more difficult. A replacement facility is being studied to maintain and improve traffic services to the island.

Alternates under consideration include:

1. No Action
2. Ferry Crossing
3. Tunnel Crossing
4. Bridge Replacement

The bridge replacement alternate includes two corridors. One corridor is parallel to the existing bridge on essentially the same alignment. The other corridor is further east and follows a more direct route across the inlet. The bridge replacement alternate also includes variations in the structure type and navigational clearances. A feasibility study has been completed which indicates that the No Action, Ferry Crossing, and Tunnel Crossing Alternates are not reasonable.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed interest or are known to have interest in this proposal. The draft EIS will be available for public and agency review and comment prior to the public hearing. A formal interagency scoping meeting is planned for May 29, 1991.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Robert L. Lee, P.E.,

District Engineer, FHWA, Raleigh, North Carolina.

[FR Doc. 91–10018 Filed 4–26–91; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

Automotive Fuel Economy Program; Report to Congress; Correction

In report to Congress document 91–7784 beginning on page 13691 in the issue of Wednesday, April 3, 1991, make the following correction:

1. On page 13703, in the third column, in the first full sentence "Some manufacturer previously eligible for alternative fuel economy of acquisition by larger manufacturers." should read "Some manufacturers previously eligible for alternative fuel economy standards may not be eligible for future model years as a result of acquisitions by larger manufacturers."

Dated: April 24, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91–10017 Filed 4–26–91; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1990 Rev., Supp. No. 13]

Surety Companies Acceptable on Federal Bonds; Termination of Authority; Central Mutual Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Central Mutual Insurance Company, of Van Wert, Ohio, under the United States Code, title 31, sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 55 FR 27340, July 2, 1990.

With respect to any bonds currently in force with Central Mutual Insurance Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 287–0521.

Dated: March 23, 1991.

Charles F. Schwan, III,

Director, Funds Management Division.

[FR Doc. 91–9993 Filed 4–26–91; 8:45 am]

BILLING CODE 4810–35–M

[Dept. Circ. 570, 1990 Rev., Supp. No. 11]

Surety Companies Acceptable on Federal Bonds, Name Change: Puerto Rican-American Insurance Company

Puerto Rican-American Insurance Company a Puerto Rico Corporation, has formally changed its name to The Continental Insurance Company of Puerto Rico, effective January 8, 1991. The company was last listed as an acceptable surety on Federal bonds at 55 FR 27362, July 2, 1990.

Federal bond approving officers should annotate their reference copies of the Treasury Circular 570, 1990 Revision, at page 55 FR 27343 to reflect this change.

A Certificate of Authority as an acceptable surety on Federal bonds, is hereby issued, effective January 8, 1991 under sections 9304 to 9308 of title 31 of the United States Code, to The Continental Insurance Company of Puerto Rico, San Juan, Puerto Rico. This Certificate replaces the Certificate of Authority issued to the Company under its former name. The underwriting limitation of $5,381,000 established for the company as of July 1, 1990, remains unchanged until the July 1, 1991, revision is published, unless revoked prior to that date. The certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the circular, may be obtained from the Surety Bond Branch, Funds Management Division, Department of the Treasury, Washington, DC 20227, Telephone (202) 287–0521.

Dated: March 23, 1991.

Charles F. Schwan, III,

Director, Funds Management Division.

[FR Doc. 91-9994 Filed 4-26-91; 8:45 am]

BILLING CODE 4810-35-M

Office of Thrift Supervision

[AC-18]

First Federal Savings and Loan Association of Rochester, Rochester, NY and First Federal Savings and Loan Association of Cape Cod, Hyannis, MA; Final Action; Approval of Conversion Application; Approval of Merger Application

Date: April 19, 1991.

Notice is hereby given that on April 19, 1991, the Director of the Office of Thrift Supervision approved the application of First Federal Savings and Loan Association of Cape Cod, Hyannis, Massachusetts, to merge into First Federal Savings and Loan Association of Rochester, Rochester, New York, the application of First Federal Savings and Loan Association of Rochester, Rochester, New York, to convert to the federal stock form of organization pursuant to a modified conversion, and approved the acquisition of the conversion stock by B.A.T. Industries plc, Imasco Limited, and CT Financial Services, Inc., and related companies.

By the Office of Thrift Supervision.

Nadine Y. Wshington,

Corporate Secretary.

[FR Doc. 91-10022 Filed 4-26-91; 8:45 am]

BILLING CODE 6720-01-M

[AC-17: OTS No. 5689]

Keokuk Federal Savings and Loan Association, Keokuk, Iowa; Final Action; Approval of Conversion Application

Notice is hereby given that on April 12, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of Keokuk Federal Savings and Loan Association, Keokuk, Iowa for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and Deputy Regional Director, Office of Thrift Supervision of Des Moines, Regency West 2, Suite 300, 1401 50th Street, West Des Moines, Iowa 50265.

Dated: April 18, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-10023 Filed 4-26-91; 8:45 am]

BILLING CODE 6720-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 82
Monday, April 29, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMISSION ON CIVIL RIGHTS

April 25, 1991.

DATE AND TIME: Friday, May 3, 1991, 9:00 a.m.–5:00 p.m.

PLACE: U.S. Commission on Civil Rights, 1121 Vermont Avenue, N.W., Room 512, Washington, D.C. 20425.

STATUS: Open to the Public.

Friday, May 3, 1991

I. Approval of Agenda
II. Approval of Minutes of April Meeting
III. Announcements
IV. Draft Letter to the President on the 1992 Elections
V. Options Paper on Police Conduct
VI. State Advisory Committee Appointment: Idaho, Maryland, New York, and Washington
VII. *Fair and Open Environment? Bigotry and Violence on College Campuses in California*
VIII. Staff Director's Report
IX. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications Division, (202) 376–8312.

Emma Monroig,
Solicitor.
[FR Doc. 91–10168 Filed 4–25–91; 2:01 pm]
BILLING CODE 6335–01–M

DATE AND TIME:
May 10, 1991—8:30 a.m. Closed Session
May 10, 1991—9:00 a.m. Open Session

PLACE: National Science Foundation, 1800 G Street, NW. Room 540, Washington, DC 20550.

STATUS:
Part of this meeting will be open to the public.
Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Friday, May 10, 1991

Closed Session (8:30 a.m. to 9:00 a.m.)

1. Minutes—March 1991 Meeting
2. NSB and NSF Staff Nominees
3. Election of Executive Committee Members
4. Grants and Contracts

Friday, May 10, 1991

Open Session (9:00 a.m. to 11:30 a.m.)

5. Chairman's Report
6. Minutes—March 1991 Meeting
7. NSB Calendar of Meetings for 1992
8. Delegation of Authority
9. Director's Report
10. Annual Executive Committee Report
11. Annual Report on the NSF Proposal Review System
12. Other Business

Thomas Ubois,
Executive Officer.
[FR Doc. 91–10202 Filed 4–25–91; 3:58 pm]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of April 29, May 6, 13, and 20, 1991.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of April 29

Thursday, May 2

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Brown Ferry Unit 2 Restart (Tentative)

Week of May 6—Tentative

Monday, May 6

9:00 a.m.
Briefing on Maintenance Rule (Public Meeting)

Tuesday, May 7

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 13—Tentative

Wednesday, May 15

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 20—Tentative

Monday, May 20

10:00 a.m.
Briefing on Final Rule on Performance Based QA—Part 35 (Public Meeting)

Tuesday, May 21

10:00 a.m.
Briefing on BRC Consensus Process (Public Meeting)
2:00 p.m.
Briefing on Proposed Rule on Training and Qualification of Nuclear Power Plant Personnel (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492–0292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: April 24, 1991.

William M. Hill, Jr.,
Office of the Secretary.
[FR Doc. 91–10143 Filed 4–25–91; 1:50 pm]
BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

Meeting

TIME AND DATE: 9:00 a.m., April 30, 1991.

PLACE: Conference Room, 1333 H Street, NW., Suite 300, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Docket No. R90–1.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW., Washington, D.C. 20268–0001, Telephone (202) 789–6840.

Charles L. Clapp,
Secretary.
[FR Doc. 91–10093 Filed 4–24–91; 4:33 pm]
BILLING CODE 7710–FW–M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Board of Directors of the Resolution Trust Corporation will meet in open session following the adjournment of the FDIC open meeting beginning at 2:00 p.m. on Tuesday, April 30, 1991 to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Discussion Agenda:

A. *Memorandum re:*

Proposed policy on self-insurance for real estate owned property.

B. *Memorandum re:*

Proposed policy on collateralized put obligations.

C. *Memorandum re:*

Staff requests for delegation of authority to issue subpoenas.

D. *Memorandum re:*

Staff requests for delegation of authority to appoint contractors as the Corporation's agent to perform duties pursuant to services agreements.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. John M. Buckley, Jr., Executive Secretary of the Resolution Trust Corporation, at (202) 416–7282.

Dated: April 23, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91–10094 Filed 4–25–91; 9:21 am]

BILLING CODE 6714–01–M

federal register

Monday
April 29, 1991

Part II

Department of Agriculture

Forest Service

National Environmental Policy Act Revised Policy and Procedures; Notice; Request for Comment

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596-AB05

National Environmental Policy Act Revised Policy and Procedures

AGENCY: Forest Service, USDA.
ACTION: Notice of revised policy and procedures; request for comment.

SUMMARY: The Forest Service gives notice of and requests comment on proposed revisions to its policy and procedures for implementing the National Environmental Policy Act and the regulations of the Council on Environmental Quality. Upon adoption, this direction would replace current policy and procedures issued through the agency directives system as Forest Service Manual (FSM) chapter 1950, Environmental Policy and Procedures, and Forest Service Handbook (FSH) 1909.15, Environmental Policy and Procedures Handbook. These revisions are needed to address new regulations, case law, experience gained with existing procedures, and public and internal comments on the current policy and procedures.

DATES: Comments must be received in writing by June 28, 1991.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (1950), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090.

FOR FURTHER INFORMATION CONTACT: Stephen E. Stine, Environmental Coordination Specialist, (202) 447-4708.

SUPPLEMENTARY INFORMATION: Chapter 1950 of the Forest Service Manual (FSM) and Forest Service Handbook (FSH) 1909.15 contain Forest Service policy and procedures for implementing the National Environmental Policy Act (NEPA) in compliance with the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500-1508). The current directives were adopted after notice and comment on June 24, 1985 (50 FR 26078, part II).

In this proposed revision, both FSM 1950 and FSH 1909.15 have been reorganized, revised, and edited for a more concise, logical presentation and for ease of understanding by both Forest Service employees and other persons using these guidelines. In addition, relevant portions of the CEQ regulations at 40 CFR parts 1500-1508 have been incorporated into the text of the Handbook for ease of understanding and reference.

The Forest Service Manual sets forth the broad authorities, objectives, policies and responsibilities needed primarily by agency decision makers. Procedural and detailed direction for carrying out the broad policy in the Manual is set forth in separate handbooks. Consistent with agency directives policy, FSM 1950 has been revised to specify desired results, to minimize procedural detail, to rely as much as practicable on the judgment of field level professionals, and to permit discretion in achieving on-the-ground results, given the diverse nature of the biologic, geographic, and socio-economic conditions under which the Forest Service operates. The direction in FSH 1909.15 is intended to include all information and procedures needed to conduct and document environmental analyses and to prepare and distribute both decision and environmental documents.

Several important changes are being proposed. The proposed Handbook contains new and expanded direction on providing notice to the public of upcoming proposals (Zero Code Chapter), on analyzing new information related to environmental concerns or changed circumstances after a decision has been made (chapter 10), and on excluding certain categories of actions from documentation in an environmental assessment or environmental impact statement (chapter 30). Also, changes are proposed to the content requirements for decision documents. A discussion of the specific changes follows.

Revisions FSM 1950

No substantive changes in policy are proposed in FSM 1950 with the exception of limiting the content of supplements to FSM 1950 and FSH 1909.15 by units other than the Washington Office. Process-related direction on scoping, environmental analysis, documentation, related documents, categorical exclusions, and emergency and classified actions is being removed from FSM 1950 and incorporated with other procedural direction in the Handbook.

Revisions to FSH 1909.15

Zero Code Chapter. In the Forest Service directive codification scheme, direction in a "zero code" chapter at the beginning of a handbook sets forth the broad legal authority, policies, responsibilities, and other direction that govern or apply to all subsequent direction.

Specific changes planned in this chapter of the Handbook include: clarification of the purpose of FSH 1909.15 regarding the integration of environmental analysis into the work of all Forest Service programs, including implementation of the National Forest Management Act (36 CFR part 219); and inclusion of direction on emergency and classified actions currently in FSM 1950. An Authority section provides a synopsis of the enabling legislation, regulations, and Departmental policies and procedures concerning environmental analyses. The Definitions section now incorporates selected terms and definitions directly from the CEQ Regulations (40 CFR part 1500-1508). The definition of decision document is expanded to include a decision memo, a new type of document established by the agency when it adopted new administrative appeal procedures for National Forest System Land and Resource Management plan and project decisions (36 CFR part 217; 54 FR 3358, January 23, 1989).

This chapter would also establish new requirements for public notice of upcoming proposals. This proposed direction would require that each Forest Supervisor, Station Director, and the Area Director prepare and distribute a calendar of proposed actions that may undergo environmental analysis. This calendar is not intended to be a substitute for appropriate scoping at the time environmental analysis begins. Rather, the purpose of the calendar is to give early, informal notice of proposals so that the public can become aware of Forest Service activities, indicate their interest in specific proposals, and become involved early in the process. The direction calls for the calendar to be distributed to interested and affected agencies, organizations, and individuals. As a minimum, the calendar would be distributed twice a year. Direction for the calendar of proposed actions is found in section 07 of the Zero Code chapter.

Chapter 10—Environmental Analysis. Direction on scoping would be placed in this chapter rather than in a chapter by itself. The purpose of this reorganization is to emphasize that scoping is a part of environmental analysis. The scoping section emphasizes the importance of involving the public early in the planning and decisionmaking process. A new section 11.6 on determining if a proposal can be categorically excluded would be added to better guide Forest Service employees. Section 13, Collecting and Interpreting Data, has been expanded to include the requirements for addressing incomplete or unavailable information when evaluating adverse impacts.

A new section 18 would provide direction on analysis of new information after a decision has been made. A responsible official may learn of new

information relating to the environmental effects of a proposed action after a decision has been made, but prior to completion of the project or activity. New information may result from monitoring, research, further intensive inventory, or changed circumstances, for example, as a result of fire, flood, or windstorm. Direction for reviewing the new information and documenting the results is provided in section 18 of the Handbook. The revision would provide for the preparation of a supplement to an environmental assessment and the determination of whether to prepare a new finding of no significant impact (FONSI). New direction also clarifies what decision documents would be required based on the nature of the new information or changed circumstances.

Chapter 20—Environmental Impact Statements and Related Documents. This chapter would replace existing chapter 40 of the same title. Highlights of new or revised direction in this chapter follow.

1. *Actions Requiring EIS's.* A section would be added concerning classes of actions requiring environmental impact statements (EISs), previously addressed in FSM 1952.1. Two new classes of actions requiring EIS's would be added:

a. Proposals to carry out or to approve the operational aerial application of chemical pesticides, and

b. Proposals that would substantially alter the undeveloped character of an inventoried roadless area of 5,000 acres or more.

2. *Notice of Intent.* The required content of a notice of intent to prepare an EIS has been expanded to give the public more information concerning proposed actions. The CEQ regulations require that a notice of intent to prepare an environmental impact statement contain four elements—the proposed action, possible alternatives, the proposed scoping process, and the name and address of an agency contact person. The Forest Service has additional content requirements. The agency's experience is that the more information the public is given during scoping, the more precise or specific the public can be in providing comments on the proposed action and the potential environmental effects. Therefore, in addition to the four elements required by the CEQ regulations, direction would be added to require that notices of intent must describe or identify the nature and scope of the proposed action and the decision to be made, the preliminary issues, any permits and licenses required to implement the proposed action, the responsible official, and the estimated schedule for completing the analysis. Guidance for preparing a notice of intent is contained in section 21 of the Handbook.

3. *Record of Decision.* Guidelines for the content requirements of the Record of Decision would be expanded to include the following: identification of the issues and inclusion of a brief summary of public participation efforts; identification of factors other than environmental consequences in making the decision; a statement of the findings required by other laws; and designation of a contact person. Additional direction also would be given for the notice and distribution of the record of decision, in addition to the State Single Point of Contact.

The National Forest Management Act of 1976 (NFMA) requires that subject to valid existing rights, decisions implemented on National Forest lands after approval of a Forest Land and Resource Management Plan, be consistent with the Forest Plan. NFMA also requires certain findings related to vegetation manipulation to be made prior to making a decision. Other laws not directly related to National Forest management place responsibility on the Forest Service to make sure certain conditions exist prior to taking an action. For example, the Federal Land Policy and Management Act requires the Forest Service to determine that a proposed use is in the public interest prior to issuing a land use occupancy permit. The Endangered Species Act also requires that the Forest Service find that certain conditions be met prior to taking an action if the habitat for an endangered or threatened species may be affected. Therefore, the agency's procedures would be amended to require that all decisions documented in a Record of Decision must contain the findings required by other laws and regulations which relate to implementation of the decision being made.

Chapter 30—Categorical Exclusions. In April 1987 the Western Natural Resource Law Clinic, on behalf of the Oregon Natural Resources Council and The Wilderness Society, petitioned the Forest Service for rulemaking regarding the use of categorical exclusions. They asked the Forest Service to:

1. Amend Forest Service Manual (FSM) section 1952.2 so that it describes specific and objectively identifiable categories of actions to be excluded from environmental documentation.

2. Prohibit the categorical exclusion of timber sales involving more than 25 thousand board feet or more than one acre.

3. Immediately stay the application of FSM 1952.2 to timber sales of more than 25 thousand board feet or more than one acre until final agency action on this petition.

This proposed revision is designed to respond to the first two proposals. In this proposed revision of agency procedure, the categories are now more specific and objectively identifiable. In addition, any proposed action to be excluded must fit within one of the specific categories and involve no extraordinary circumstances.

The request to prohibit the categorical exclusion of timber sales involving more than 25 thousand board feet or more than one acre is unreasonably conservative and has not been included in this proposed revision. Instead, the proposed revision of FSH 1909.15 would categorically exclude any proposal to harvest or salvage timber which remove one million board feet or less of merchantable wood products; require one mile or less of new road construction, assure regeneration of harvested or salvaged areas, where required; and are consistent with Forest land and resource Management Plans. These activities have little potential for soil movement, loss of soil productivity, water and air degradation or impact on sensitive resource values. The Forest Service has prepared environmental assessments on hundreds of timber sales which have these characteristics and has always found them to have no significant environmental effects. This category is fully consistent with the Council on Environmental Quality's advice which encourages agencies to consider broadly defined criteria which characterize types of actions that, based on the agency's experience, do not cause significant environmental effects (46 FR 41131, August 14, 1981 and 48 FR 34263–34268, July 28, 1983).

In response to petitioner's request to stay categorical exclusions of timber sales of more 25,000 board feet or more than one acre, the Forest Service issued Interim Directive Number 2 to FSH 1909.15 (54 FR 9073–9075, March 3, 1989) which limited categorical exclusion of salvage, thinning, and harvest cuts to those less than 100 thousand board feet or less than 10 acres. Subsequently, Interim Directive Number 17 to Forest Service Manual 1950, which was issued on March 22, 1989, and published in the **Federal Register** on August 21, 1989 (54 FR 34533), provides broad guidance for determining if an action may be categorically excluded. Upon expiration, both interim directives were reissued as Interim Directive Number 3 (January 31, 1990) and Interim Directive Number 18 (April 6, 1990) respectively.

In this proposed revision, detailed directions on categorical exclusions would be removed from FSM 1950 and placed in FSH 1909.15 for ease of reference and use. The Forest Service has followed the advice of the Council on Environmental Quality in considering which types of action, based on the agency's experience, do not cause significant environmental effects (48 FR 34263–34268, July 28, 1983). Experience in applying agency NEPA procedures and project monitoring has resulted in identifying 20 categories of actions which may be categorically excluded from documentation in an environmental impact statement (EIS) or environmental assessment (EA). The addition of new categories and expansion of existing ones is necessary to prevent needless paperwork, to clarify definitions of categories, and to expand examples to facilitate understanding and interpretation, thereby ensuring proper use.

In addition, the Secretary of Agriculture's seven categories of action that are excluded from documentation (7 CFR 1b.3) have been incorporated into the text of the handbook.

Other major proposed revisions to Chapter 30 of the Handbook address decision documentation and record keeping. A summary of these follows:

1. *Decision Memo.* When the Forest Service's administrative appeal regulations (36 CFR part 217) were adopted in 1989 (54 FR 3342, January 23, 1989), decisions to proceed with some proposed actions which are categorically excluded from documentation in an environmental impact statement or environmental assessment were made subject to administrative review. To implement this provision a new type of document—the decision memo—was developed to disclose the decision to be implemented, the reasons for categorically excluding the proposed action, and the findings required by other laws and regulations. The format and content requirements were issued as Interim Directives Numbers 2 and 17, effective February 28, 1989, and March 22, 1989, respectively. These interim requirements would be incorporated as continuing direction in section 32 of the proposed Handbook revision. Additionally, section 33 would provide direction for giving public notice of a decision to proceed with a proposed action which has been categorically excluded and for distributing a decision memo to interested and affected individuals, groups, organizations, and agencies.

2. *Categories for which a Project File and Decision Memo are not Required.* The Chief of the Forest Service has established six categories for which a project or case file and decision memo are not required. Of these six categories two are new. The new categories include: (a) Proposals to issue or issuance of rules, regulations, policy, or procedures which in and of themselves result in little or no environmental effects. Agency experience indicates that most codified rules and policies issued by the agency do not have direct or indirect environmental effects. Generally, such rules are highly procedural and establish broad policy and process to govern program managers. (b) Proposals to issue, reissue, or adjust land use authorization which is consistent with an existing Forest Land and Resource Management Plan where the proposed activity or continuation of the activity will have little potential for soil movement, loss of soil productivity, water and air quality degradation, or impact on sensitive resources. Substantial agency experience indicates activities in this category have temporary or nonexistent environmental effects.

Two other categories are new to this section. These are: (1) Proposals to acquire land or interest in land involving only transfer of title to the United States which include purchase, donation, tripartite land-for-timber exchanges, or acquisition of replacement land in Sisk Act cases; and (2) Proposals to carry out small-scale pest management activities that have little adverse impact on non-target species, soil productivity, water quality, or sensitive resources—are new to this section. Currently, decisions to categorically exclude these actions require a decision memo. However, because these types of actions have rarely been appealed in the past, the agency concludes that decision memos and project or case files are no longer needed.

The category of proposals to issue orders pursuant to 36 CFR Part 261 to provide short-term protection for sensitive resource values and which, in and of themselves, result in little or no environmental effects has been modified to reflect the short-term nature of the action.

The category covering proposals to perform routine repair, maintenance, and administrative activities which cause little surface disturbance includes more specific examples for enhanced clarity and understanding.

3. *Categories of Actions Requiring a Project File or Case File and Decision Memo.* The Chief of the Forest Service has also identified fourteen categories for which a project or case file and decision memo are required. Nine of these fourteen categories are new. One of the nine new categories concerns proposals to conduct research activities and administrative studies which do not involve genetically engineered organisms and that have little potential for soil movement, loss of soil productivity, water and air quality degradation, or impact on sensitive resource values. In the absence of extraordinary circumstances, activities in this category have been shown not to have significant effects and, therefore, are appropriate to exclude from documentation in an environmental assessment or environmental impact statement.

Another new category concerns proposals to issue or reissue a term permit for the continuing operation of existing facilities that have little potential for soil movement, water and air quality degradation, or impact on sensitive resource values and that are consistent with the existing Forest land and resource management plan. This type of use is excluded from documentation, because it continues an existing use without allowing new construction or ground-disturbing activities.

The third new category, amendments to forest land and resource plans which do not change decisions made in forest plans, is categorically excluded when the amendments in and of themselves have little potential for environmental effects. Examples include minor management area boundary changes and text changes made to management direction for clarification or updating of information.

Other new categories include—(1) Proposals or issuance of authorizations to construct, reconstruct, or upgrade trails and low-standard roads (service level D as defined in FSH 7709.56) where the activity will have little potential for soil movement, loss of soil productivity, water and air degradation or impact on sensitive resource values and (2) Proposals or issuance of authorizations to construct, reconstruct, or upgrade facilities or utilities on approved sites that have little potential for soil movement, loss of soil productivity, water quality degradation, or impact on sensitive resource values were previously contained in one category and did not require a project file or decision memo. In order to be more precise and clarify the definition and because of anticipated interest by various publics, a project file and decision memo would now be required.

Previously, an existing category of low impact silvicultural activities included a variety of actions such as harvest, salvage, thinning, planting and

site preparation. In order to provide precise, clearly understood categories of proposed actions, this category was expanded and would now be divided into four separate categories. They include: (1) Proposals to harvest or salvage timber which remove one million board feet or less of merchantable wood products; require one mile or less of new road construction; assure regeneration of harvested or salvaged areas, where required; (2) Proposals to thin merchantable timber from over-stocked stands which require one mile or less of new road construction; (3) Proposals to artificially regenerate areas to native tree species, including needed site preparation not involving the use of pesticides; and (4) Proposals to improve vegetation or timber conditions using approved silvicultural or habitat management techniques, not including the use of herbicides. Each of the categories includes an expanded definition wherein the activity will have little potential for soil movement, loss of soil productivity, water and air degradation or impact on sensitive resource values and is consistent with Forest land and resource management plans. The parameters for the harvesting activities have been increased because of the number of environmental assessments and findings of no significant impact found in every case over the last 10 years in timber sales of this size.

Lastly, a new category is proposed—proposals to reissue a grazing permit which newly incorporates forest plan management direction when there is little potential for soil movement, loss of soil productivity, water quality degradation, or impact on sensitive resource values. Examples include reissuing a term permit as a result of permit expiration or issuing a grazing permit as a result of the sale of permitted livestock or base property. The remaining categories have not changed.

Chapter 40—Environmental Assessment and Related Documents. This chapter would replace existing Chapter 30 and provide direction for completing a finding of no significant impact; preparing decision notices; and informing the public of the decision. Most of the direction in this chapter would remain unchanged from that in the current Handbook. However, direction on preparing a decision notice would be expanded to include: additional guidance in regard to actions when the Chief or Secretary is the responsible official; expanded information required to identify the location of the proposed action; and requirements for a summary of how the public was involved and the name of a contact person. In addition, the decision notice would include the findings required by other laws as described in proposed chapter 20.

Chapter 50—Implementation and Monitoring. Direction would be provided for the required conditions under which implementation of activities in inventoried roadless areas or "further planning areas" can occur.

Chapter 60—References. This chapter contains reference material needed to assist in conducting analyses, preparing documents, and giving notices of decisions. Because of the chapter's length and because the information contained in this chapter is generally available to the public, only the table of contents of chapter 60 is published in this notice. It is included in the Handbook to ensure that employees have ready access to these materials.

Environmental Impact

Based on experience and environmental analysis, the implementation of the revised Forest Service environmental policy and procedures will not significantly affect the quality of the human environment, individually or cumulatively. Therefore, this action is categorically excluded from documentation in an environmental impact statement or an environmental assessment (FSM 1952.2 and 40 CFR 1508.4).

Controlling Paperwork Burdens on the Public

These policies and procedures do not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 and, therefore, impose no paperwork burden on the public.

Impact

This proposed policy has been reviewed under USDA procedures and Executive Order 12291. It has been determined that this proposed policy is not a major rule. The policy will not have an effect of $100 million or more on the economy; substantially increase prices or costs for consumers, industry, or State or local governments; nor adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in foreign markets. In short, little or no effect on the National economy will result from this policy as it consists primarily of minor changes in agency procedures and it does not increase costs to the Government or users of the National Forests.

Moreover, this policy has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities.

The full text of FSM 1950 and FSH 1909.15 is set out at the end of this notice. Comments are invited and will be considered prior to adoption of the final policy and procedures.

Dated: March 15, 1991.

George M. Leonard,

Associate Chief.

Title 1900—Planning

Chapter 1950—Environmental Policy and Procedures

Contents

This chapter sets forth Forest Service objectives, policy, and responsibilities for meeting the requirements of the National Environmental Policy Act (NEPA).

1950.1 Authority

1. *National Environmental Policy Act of 1969 (NEPA),* as amended (42 U.S.C. 4321–4346). NEPA encourages the Forest Service to carry out its programs in ways that will create and maintain conditions under which people and nature can exist in productive harmony and can fulfill social, economic, and other requirements of present and future generations.

The act requires the agency to study, develop, and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources. NEPA also directs the use of a systematic, interdisciplinary approach in planning and decisionmaking for

actions that may affect the human environment.

The act also requires detailed statements on proposals for legislation and on other major Federal actions that significantly affect the quality of the human environment.

2. *Council on Environmental Quality Regulations* (40 CFR 1500–1508). These regulations set forth specific requirements for implementing the National Environmental Policy Act. The regulations implement the "action-forcing" section 102(2) of the National Environmental Policy Act; ensure environmental information is available to public officials and the public including emphasis on significant issues; and provide direction to assist public officials in making decisions based on an understanding of environmental consequences.

3. *U.S. Department of Agriculture NEPA Policies and Procedures* (7 CFR part 1b). These regulations direct Department of Agriculture agencies to develop and to implement procedures for compliance with NEPA. The regulations exclude seven categories of activities from documentation such as program funding, educational and informational activities, and civil and criminal law enforcement and investigation activities.

The full texts of these authorities and supplementary Council on Environmental Quality guidance are printed in chapter 60 of the Forest Service Environmental Policy and Procedures Handbook (FSH 1909.15). Additionally, the authorities are included, in part, in bold type in relevant portions of FSH 1909.15.

1950.2 Objectives

In meeting the requirements of the National Environmental Policy Act, the Forest Service seeks to:

1. Fully integrate National Environmental Policy Act requirements into agency planning and decisionmaking.

2. Fully consider the environmental impacts of Forest Service proposed actions.

3. Involve interested and affected agencies, organizations, and persons in planning and decisionmaking.

4. Conduct and document environmental analyses and subsequent decisions appropriately, efficiently, and cost effectively.

5. Allow line officers to carry out the direction in FSH 1909.15, the Environmental Policy and Procedures Handbook.

1950.3 Policy

It is Forest Service policy to:

1. Determine the depth and breadth of environmental analysis required for a proposed action.

2. Involve the public in scoping and environmental analysis of a proposed action.

3. Give timely notice to interested and affected parties of the availability of environmental and decision documents and make those documents available to the public free of charge to the extent practicable.

4. Apply the concepts of tiering, adoption, and incorporation by reference to both environmental impact statements and environmental assessments.

1950.4 Responsibility

1950.41 Authority to act as Responsible Official

1950.41a Chief

The Chief reserves the discretion to be the responsible official (sec. 1950.5) for environmental analyses, documentation, and decisions relating to proposed actions of national importance. In accordance with the delegations of general authority at FSM 1235, the Associate Chief may act as responsible official on any matter reserved by the Chief, unless the Chief directs otherwise.

In cases of proposed legislation where the Secretary of Agriculture is the responsible official, the Chief is responsible for providing support for the analysis and documentation.

1950.41b Deputy Chiefs and Associate Deputy Chiefs

In accordance with delegations at FSM 1235, the Deputy Chiefs and Associate Deputy Chiefs may serve and sign as the responsible official on any environmental matter of national importance within their areas of jurisdiction, reserved to the Chief, unless the Chief specifically directs otherwise.

1950.41c Regional Foresters, Station Directors, and Area Director

As provided in FSM 1235, Regional Foresters, Station Directors, and the Area Director are delegated responsibility for conducting environmental analyses, preparing environmental documents, and making decisions related to proposed actions under their jurisdiction.

Regional Foresters, Station Directors, and the Area Director may file environmental impact statements directly with the Environmental Protection Agency for proposed actions within their authority, except that matters requiring consultation with the Council on Environmental Quality are referred to the Washington Office Director of Environmental Coordination.

Regional Foresters, Station Directors, and the Area Director may redelegate responsibility for conducting environmental analyses, preparing the necessary documentation, filing environmental impact statements, and making decisions on proposed actions to Forest Supervisors, Assistant Station Directors, Research project leaders, and State and Private Forestry field representatives.

1950.41d Forest Supervisors

Forest Supervisors have authority and responsibility for conducting environmental analyses, preparing the necessary documentation, and making decisions on proposed actions under their jurisdiction (FSM 1235). This authority may be redelegated to District Rangers by supplement to this chapter or on a case-by-case basis to District Rangers.

1950.42 Issuance of Directives

1950.42a Deputy Chief for Programs and Legislation

The authority to issue new or revised National Environmental Policy Act procedures is reserved to the Deputy Chief except as noted in section 1950.43.

1950.42b Field Line Officers

Notwithstanding the delegation of authority in FSM 1104 to issue supplements to the Forest Service Manual and the Handbooks, Regional Foresters, Station Directors, Area Director, and Forest Supervisors may issue supplements to FSM 1950 and FSH 1909.15 only as follows:

1. Supplements to FSM 1950 may be issued only to delegate authority or responsibility.

2. Supplements to FSH, 1909.15 may be issued only for the purposes of issuing internal procedures for preparing and processing environmental documents and records, assigning responsibilities, or adding reference materials.

1950.43 Director of Environmental Coordination

The Director is the staff official responsible for developing and recommending national policy, procedures, coordination measures, technical administration, and training necessary to implement the National Environmental Policy Act (NEPA) for the Forest Service. The Director is also responsible for policy, procedures, and training for conducting social impact

analysis (FSM 1973 and FSH 1909.17, ch. 30).

The Director is responsible for liaison with the Council on Environmental Quality and consults with the Council on possible referrals (40 CFR part 1504) and emergencies (40 CFR 1506.11). The Director also provides liaison with the Environmental Protection Agency and, as needed, requests changes in the prescribed time periods for preparation and processing of environmental impact statements (40 CFR 1506.10).

When the Chief or the Secretary is the responsible official for a proposed action, the Director advises and assists the appropriate field unit or Washington Office (WO) staff in preparation of the necessary documents. The Director coordinates, reviews, and processes documents for actions for which the Chief or the Secretary is the responsible official.

The Director's signing authority includes:

(a) Correspondence with the Council on Environmental Quality, Environmental Protection Agency, and other departments and agencies, and on Forest Service legislation, projects, and programs which relate to the National Environmental Policy Act of 1969.

(b) General correspondence regarding environmental and decision documents and environmental quality matters.

(c) Routine correspondence (FSM 1237) to Members of Congress and routine referrals from the President and Secretary.

1950.5 Definitions

Responsible Official. The responsible official is the agency employee who has the line or delegated authority to make a decision on a proposed action.

Note: When issued in the Forest Service directive system, certain text of this Handbook will be set out in boldface type, however, **Federal Register** printing specifications do not permit that material to be set out in boldface here.

Environmental Policy and Procedures Handbook

Contents

Zero Code

Chapter

10 Environmental Analysis.
20 Environmental Impact Statements and Related Documents.
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08 Emergency and Classified Action.

This Handbook provides procedural guidance for implementing the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) regulations (40 CFR 1500–1508), USDA NEPA Policies and Procedures (7 CFR part lb), and Forest Service Manual 1950 in Forest Service activities.

This Handbook provides direction and guidance for analyzing and documenting the environmental consequences of proposed actions. Chapter 10 sets forth guidelines on scoping and environmental analysis. Chapters 20, 30, and 40 contain the documentation and process requirements for environmental impact statements, categorical exclusions, and environmental assessments. Chapter 50 addresses implementing and monitoring requirements. Chapter 60 includes the text of pertinent laws, regulations, memoranda, and other reference materials which may be useful to carry out the procedures in this Handbook.

Compliance with NEPA is fundamental to managing all Forest Service resource, research, and cooperative forestry programs and must be integrated into the management processes for these programs. Therefore, the procedures in this handbook must be used in conjunction with other direction found throughout the Forest Service Manual and Handbooks. Specifically, use this Handbook in conjunction with FSM 1950, Environmental Policy and Procedures, which sets forth the broad Forest Service objectives, policy, and responsibilities for meeting the requirements of the National Environmental Policy Act. Also, integrate the requirements in this Handbook with the procedures set forth in FSM 1920 and FSH 1909.12 and the regulations implementing the National Forest Management Act (36 CFR part 219).

For ease of reference and use, the text of the CEQ regulations governing implementation of NEPA are incorporated throughout this Handbook. The CEQ regulations are set out in boldface to distinguish them from Forest Service direction.

01 Authority

1. *The National Environmental Policy Act of 1969 (NEPA),* as amended (42 U.S.C. 4321–4346). NEPA declares a national policy which encourages "productive and enjoyable harmony between man and his environment." NEPA requires Federal agencies to: (a) use a systematic interdisciplinary approach in planning and decisionmaking which may have an impact on man s environment, (b) consider the environmental impact of proposed actions, (c) identify adverse environmental effects which cannot be avoided should the proposal be implemented, (d) consider alternatives to the proposed action, (e) consider the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and (f) identify any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

2. *Council on Environmental Quality Regulations* (40 CFR parts 1500–1508). These regulations set forth specific requirements for implementing the provisions of the National Environmental Policy Act.

3. *U.S. Department of Agriculture NEPA Policies and Procedures* (7 CFR part lb). These regulations direct Department of Agriculture agencies to develop and to implement procedures for compliance with NEPA. The regulations exclude seven categories of activities from preparation of environmental assessments or environmental impact statements.

The full text of these authorities is printed in chapter 60 of this Handbook.

02 Objectives

1. To incorporate environmental considerations into Forest Service planning and decisionmaking in a systematic and cost-effective manner.

2. To conduct and document environmental analyses and the related decisions associated with national forest resource management, cooperative forestry, and research activities in a consistent manner.

04 Responsibility.

Line officers are responsible for ensuring that the procedures in this Handbook are understood and followed.

05 Definitions.

The definitions in boldface are those taken directly from the CEQ regulations (40 CFR part 1508). The remaining terms and definitions are those devised by the Forest Service and used throughout this handbook.

1. *Act*—* * * the National Environmental Policy Act, as amended (42 U.S.C. 4321, et seq.) which is also referred to as NEPA." (40 CFR 1508.2)

2. *Categorical Exclusion*—* * * a category of actions which do not individually or cumulatively have a

significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations ({{1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. (40 CFR 1508.4)

3. *Connected Actions.* Actions are connected if they:

(i) Automatically trigger other actions which may require environmental impact statements.

(ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.

(iii) Are interdependent parts of a larger action and depend on the larger action for their justification. (40 CFR 1508.25)

4. *Cooperating Agency*—* * * any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. The selection and responsibilities of a cooperating agency are described in {1501.6. A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency. (40 CFR 1508.5)

5. *Council*—* * * the Council on Environmental Quality established by title II of the Act. (40 CFR 1508.6)

6. *Cumulative Action*—* * * actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement. (40 CFR 1508.25)

7. *Cumulative Impact*—* * * the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. (40 CFR 1508.7)

8. *Decision Document.* A decision memo, decision notice, or record of decision.

9. *Decision Memo.* A concise written record of the responsible official's decision to implement an action that has been categorically excluded from documentation in an environmental impact statement or environmental assessment (sec. 30.5).

10. *Decision Notice.* A concise written record of the responsible official's decision when an environmental assessment and finding of no significant impact are prepared (sec. 43.2).

11. *Effects.* These include:

(a) Direct effects, which are caused by the action and occur at the same time and place.

(b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems. Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial. (40 CFR 1508.8)

See also, cumulative impact.

12. *Environmental Analysis.* An investigation of a proposed action and alternatives to that action and their direct, indirect, and cumulative environmental impacts. This process provides the necessary information for reaching an informed decision. It also provides the information needed for determining whether a proposed action may have significant environmental effects and for preparing environmental documents (Ch. 10).

13. *Environmental Assessment*—(a) * * * a concise public document for which a Federal agency is responsible that serves to:

(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

(2) Aid an agency's compliance with the Act when no environmental impact statement is necessary.

(3) Facilitate preparation of a statement when one is necessary.

(b) Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted. (40 CFR 1508.9)

14. *Environmental Document*—* * * includes the documents specified in § 1508.9 (environmental assessment), § 1508.11 (environmental impact statement), § 1508.13 (finding of no significant impact), and § 1508.22 (notice of intent). (40 CFR 1508.10)

15. *Environmental Impact Statement*—* * * a detailed written statement as required by section 102(2)(C) of the Act. (40 CFR 1508.11)

16. *Environmentally Preferable Alternative.* An alternative that best meets the goals of section 101 of the National Environmental Policy Act and required by 40 CFR 1505.2(b) to be identified in a record of decision. Ordinarily, this is the alternative that causes the least damage to the biological and physical environment and best protects, preserves, and enhances historical, cultural, and natural resources. In some situations, there may be more than one environmentally preferable alternative.

17. *Federal Agency*—* * * all agencies of the Federal Government. It does not mean the Congress, the Judiciary, or the President, including the performance of staff functions for the President in his Executive Office. (40 CFR 1508.12)

18. *Finding of No Significant Impact (FONSI)*—* * * a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (§ 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (§ 1501.7(a)(5)). (40 CFR 1508.13)

19. *Floodplains.* As defined by E.O. 11988, as amended, lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year (sec. 66.3).

20. *Human Environment*—* * * shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. . .This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment. (40 CFR 1508.14)

21. *Jurisdiction by Law*—* * * agency authority to approve, veto, or finance all or part of the proposal. (40 CFR 1508.15)

22. *Lead Agency*—* * * the agency or agencies preparing or having taken primary responsibility for preparing the environmental impact statement (40 CFR 1508.16)

This also applies to environmental assessments.

23. *Legislation*—* * * a bill or legislative proposal to Congress developed by or with the significant cooperation and support of a Federal agency, but does not include requests for appropriations. The test for significant cooperation is whether the proposal is in fact predominantly that of the agency rather than another source. Drafting does not by itself constitute significant cooperation. Proposals for legislation include requests for ratification of treaties. Only the agency which has primary responsibility for the subject matter involved will prepare a legislative environmental impact statement. (40 CFR 1508.17)

24. *Major Federal Action*—* * * includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (§ 1508.27). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action.

(a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (§ 1506.8, 1508.17). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 et seq., with no Federal agency control over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.

(b) Federal actions tend to fall within one of the following categories:

(1) Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 et seq.; treaties and international conventions or agreements; formal documents establishing an agency's policies which will result in or substantially alter agency programs.

(2) Adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of Federal resources, upon which future agency actions will be based.

(3) Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.

(4) Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as Federal and federally assisted activities. (40 CFR 1508.18)

25. *Matter*—(a) With respect to the Environmental Protection Agency, any proposed legislation, project, action or regulation as those terms are used in section 309(a) of the Clean Air Act (42 U.S.C. 7609).

(b) With respect to all other agencies, any proposed major Federal action to which section 102(2)(C) of NEPA applies. (40 CFR 1508.19)

26. *Mitigation*—* * * (a) Avoiding the impact altogether by not taking a certain action or parts of an action.

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(e) Compensating for the impact by replacing or providing substitute resources or environments. (40 CFR 1508.20)

27. *NEPA Process*—* * * all measures necessary for compliance with the requirements of section 2 and Title I of NEPA. (40 CFR 1508.21)

28. *Notice of Intent*—* * * a notice that an enivornmental impact statement will be prepared and considered. (40 CFR 1508.22)

29. *Preferred Alternative.* The alternative(s) which the agency believes would best fulfill its statutory mission and responsibilities, giving consideration to environmental, social, economic, and other factors and disclosed in an environmental impact statement.

30. *Prime Farmland, Rangeland, and Forest Land.* (See Departmental Regulation 9500–3 in § 65.21 for a detailed definition.)

31. *Proposed Action.* A proposal made by the Forest Service to authorize, recommend, or implement an action to meet a specific purpose and need (see section 32).

32. *Proposal*—* * * exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated * * * A proposal may exist in fact as well as by agency declaration that one exists. (40 CFR 1508.23)

33. *Record of Decision*—* * * shall:

(a) State what the decision was.

(b) Identify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency shall identify and discuss all such factors including any essential considerations of national policy which were balanced by the agency in making its decision and state how those considerations entered into its decision.

(c) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation. (40 CFR 1505.2)

34. *Referring Agency*—* * * the Federal agency which has referred any matter to the Council after a determination that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality. (40 CFR 1508.24)

35. *Similar Action*—(3) * * * when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. (40 CFR 1508.25)

36. *Scope*—* * * the range of actions, alternatives, and impacts to be considered in an environmental impact statement. (40 CFR 1508.25)

37. *Scoping.* The procedure by which the Forest Service identifies important issues and determines the extent of analysis necessary for an informed decision on a proposed action. Scoping is an integral part of environmental analysis.

38. *Significance.* Includes both context and intensity: (a) Context. This means

that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

(b) Intensity. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

(1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

(2) The degree to which the proposed action affects public health or safety.

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment. (40 CFR 1508.27)

39. *Special Expertise*—* * * statutory responsibility, agency mission, or related program experience. (40 CFR 1508.26)

40. *Tiering*—* * * the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basinwide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:

(a) From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis.

(b) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe. (40 CFR 1508.28)

41. *Wetlands*—As defined by E.O. 11990, areas that are inundated by surface or ground water with a frequency sufficient to support, and that under normal circumstances do or would support a prevalence of vegetation or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction (sec. 66.4).

06 Overview of Process

Exhibit 1 illustrates the full National Environmental Policy Act process and indicates the normal sequence of actions.

07 Public Notice of Upcoming Proposals

07.04 Responsibility

Each Forest Supervisor, the Area Director, and each Station Director is responsible for ensuring the preparation and distribution of a calendar of proposed actions in accordance with this section.

07.1 Calendar of Proposed Actions

Provide notice of upcoming proposals which may undergo environmental analysis and documentation to interested and affected agencies, organizations, and persons through the use of a calendar of proposed actions. The purpose of the calendar of proposed actions is to give early informal notice of proposals so the public can become aware of Forest Service activities and indicate their interest in specific proposals.

1. *Frequency of Distribution.* Prepare and distribute the calendar of proposed actions at least every six months to interested and affected agencies, organizations, and individuals. For those proposed actions which are proposed and undergo analysis after publication of the calendar, notice of the status of the action shall show in the subsequent calendar.

2. *Format and Content.* Any format may be used, however as a minimum the calendar of proposed actions shall contain the following information:

(a) Name of the administrative unit and time period covered by the calendar.

(b) Description of the upcoming proposed action(s) (upcoming projects and/or activities) which are expected to undergo environmental analysis in the time period specified.

(c) Location of the proposed action including the State, county, and where appropriate, the Ranger District, and the legal land description.

(d) The estimated date when scoping may begin.

(e) The estimated date of the decision.

(f) A name, address, and telephone number of the person to contact.

(g) Status of the analysis including dates of any Federal Register or other legal notices and dates of decision documents, and the estimated implementation date(s).

08—Emergency and Classified Actions

1. *Emergency Actions.* Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations, the Federal agency taking the action should consult with the Council about alternative arrangements. Agencies and the Council will limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review. (40 CFR 1506.11)

For emergencies other than fire suppression, contact the Washington Office Director of Environmental Coordination regarding consultation with the Council on Environmental Quality (FSM 1950.41b and 1950.42).

2. *Classified Actions.* (a) Agency procedures may include specific criteria for providing limited exceptions to the provisions of these regulations for classified proposals. They are proposed actions which are specifically authorized under criteria established by an Executive Order or statute to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order or statute. Environmental assessments and environmental impact statements which address classified proposals may be safeguarded and restricted from public dissemination in accordance wtih agencies' own regulations applicable to classified information. These documents may be organized so that classified portions can be included as annexes, in order that the unclassified portions can be made available to the public. (40 CFR 1507.3(c))

Among its exemptions to public disclosure requirements, the Freedom of Information Act contains an exemption for law enforcement purposes to the extent that production of investigatory records would "(A) interfere with enforcement proceedings, * * * (E) disclose investigative techniques and personnel." (5 U.S.C. 552(b)(7) (1977).) Cannabis eradication falls within the scope of this exemption. For this reason environmental and decision documents which address cannabis eradication should be withheld from public disclosure until the cannabis has been eradicated from the site or until law enforcement needs no longer require that they be withheld.

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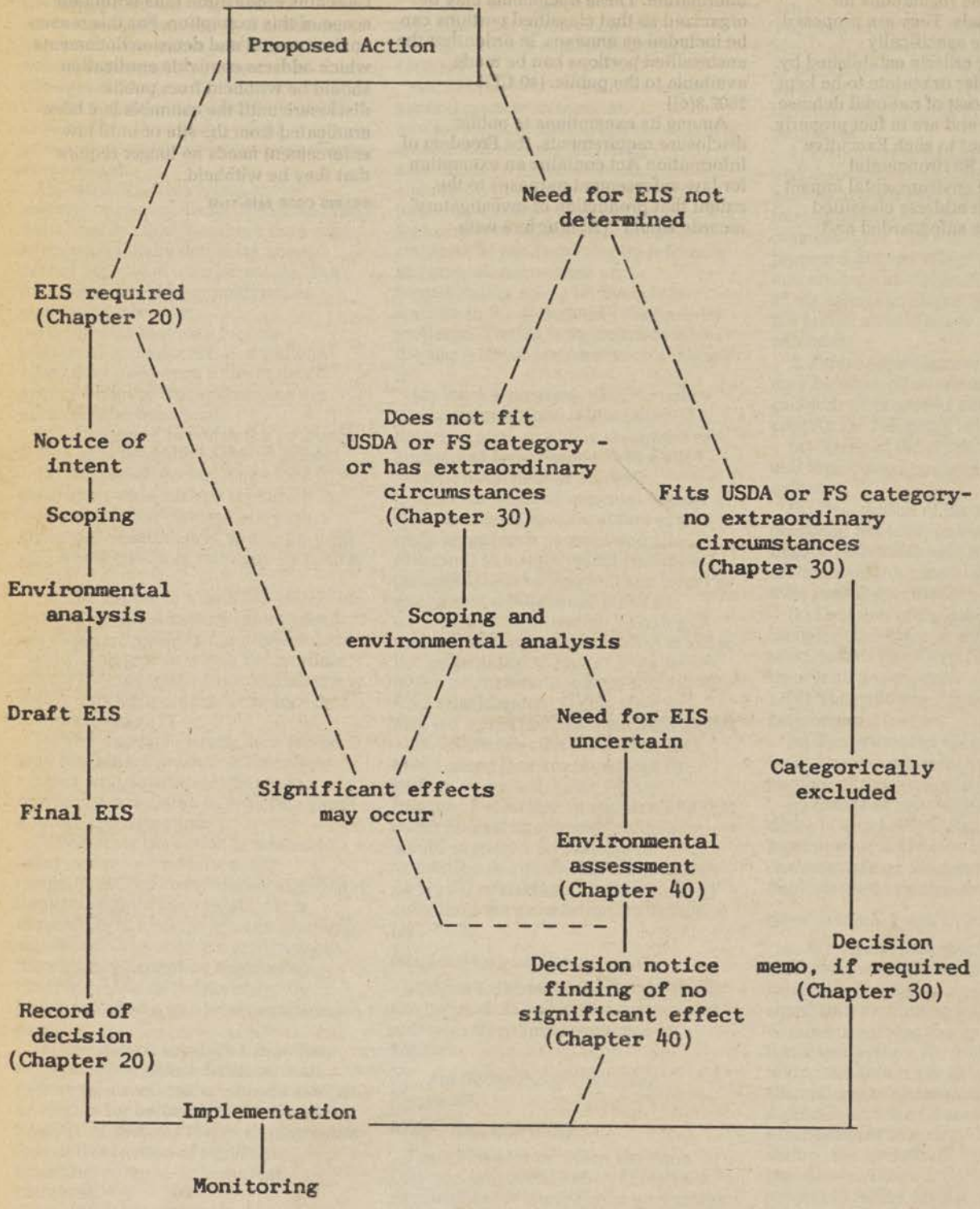
Exhibit 1 - Sec. 06 NEPA PROCESS OVERVIEW



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Chapter 10—Environmental Analysis

Contents

Environmental analysis assesses the nature and importance of the physical, biological, social, and economic effects of a proposed action and its reasonable alternatives. Exhibit 1 in sec. 06, Chapter Zero Code, shows how environmental analysis relates to other procedures required under the National Environmental Policy Act and its implementing regulations.

For ease of reference and use, the text of the relevant CEQ regulations is set out in boldface type throughout this chapter.

10.2 Objectives.

1. Conduct environmental analyses to assess the nature, characteristics, and significance of the effects of a proposed action and its alternatives on the human environment.

2. Conduct scoping to:

a. Determine the nature and complexity of the proposed action.

b. Identify environmental issues related to the proposed action.

c. Determine the disciplines required and guide environmental analysis and documentation.

d. Achieve effective use of time and money in conducting environmental analysis.

10.3 Policy.

1. Investigate the nature and characteristics of a proposed action and determine how much analysis is necessary through scoping. The use of scoping applies to all proposed actions which are analyzed using the National Environmental Policy Act process, except those which may be categorically excluded from documentation (FSH 1909.15, Ch 30); it is not confined to the preparation of an environmental impact statement.

2. Conduct the scoping actions set forth in this chapter commensurate with the nature and complexity of the proposed action.

3. Keep the public informed of the progress of environmental analyses and decisionmaking.

10.4 Responsibility.

The official who is responsible for a decision on a proposed action (FSM 1950.4) also has the responsibility to:

1. Ensure that an appropriate level of scoping and environmental analysis occurs.

2. Determine whether an interdisciplinary (ID) team of specialists and a formal plan of work are needed.

3. Select the ID team and leader and keep abreast of their work (sec. 11.7).

4. Ensure that the public is kept informed of the results of scoping and the progress of the environmental analysis commensurate with the public interest in the proposed action.

For actions where the Chief or the Secretary is the responsible official, the Washington Office (WO) Environmental Coordination Staff participates in scoping and subsequent analysis with the appropriate field or other WO staffs and involves the appropriate Deputy Chief, the Chief, or the Assistant Secretary, as necessary (FSM 1950.41a).

11 Conduct Scoping

Although the Council on Environmental Quality (CEQ) Regulations require scoping only for environmental impact statement preparation, the Forest Service has broadened the concept to apply to all proposed actions without regard to the type of documentation required, except those which may be categorically excluded.

Scoping is an integral part of environmental analysis. Scoping includes refining the proposed action, determining the responsible official and lead and cooperating agencies, identifying preliminary issues, and identifying interested and affected persons. The results of scoping are used to identify public involvement methods, refine issues, select an interdisciplinary team, establish analysis criteria, explore possible alternatives and their probable environmental effects.

Because the nature and complexity of a proposed action determine the scope and intensity of the required analysis, no single technique is required or prescribed. Except where required by statute or regulations, the responsible official may adjust or combine the various steps of the process outlined in this chapter to aid in the understanding of the proposed action and identifying issues. The CEQ Regulations provide the following direction on scoping:

> There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping.
>
> (a) As part of the scoping process the lead agency shall:
>
> (1) Invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds), unless there is a limited exception under § 1507.3(c). An agency may give notice in accordance with § 1506.6.
>
> (2) Determine the scope (§ 1508.25) and the significant issues to be analyzed in depth in the environmental impact statement.
>
> (3) Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review (§ 1506.3), narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the

human environment or providing a reference to their coverage elsewhere.

(4) Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies, with the lead agency retaining responsibility for the statement.

(5) Indicate any public environmental assessments and other environmental impact statements which are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration.

(6) Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement as provided in § 1502.25.

(7) Indicate the relationship between the timing of the preparation of environmental analyses and the agency's tentative planning and decisionmaking schedule. (40 CFR 1501.7)

11.1 Organize Scoping Effort

The National Environmental Policy Act (NEPA) requires a systematic, interdisciplinary approach to ensure integrated application of the natural and social sciences and the environmental design arts in any planning and decisionmaking that affects the human environment (NEPA, sec. 102(2)(A)).

The responsible official may choose to establish an interdisciplinary (ID) team and designate a team leader to conduct scoping and environmental analysis. However, the decision not to establish an ID team does not relieve the Forest Service of the responsibility to take an interdisciplinary approach to the analysis of the proposed action. Responsible officials shall be guided by the direction on interdisciplinary analysis in sec. 12 of this chapter.

The responsible official determines the scoping needed based on the nature and complexity of the proposed action and the decision to be made. Guidance on conducting public meetings and information gathering activities is found in FSH 1609.B, FSH 1609.13 Public Participation Handbook.

11.2 Identify the Characteristics of the Proposed Action and Nature of the Decision to be Made

The most important element of the scoping process is to correctly identify and define the proposed action. Identification of the proposed action should consider the nature, characteristics, and scope of the proposed action, the purpose and need for the proposed action, and the decision to be made.

The CEQ Regulations provide the following direction relevant to scoping associated with major Federal actions requiring the preparation on an environmental impact statement; however, the concepts apply to gathering preliminary information for all proposals which may undergo environmental analyses and documentation.

(a) Agencies shall make sure the proposal which is the subject of an environmental impact statement is properly defined. Agencies shall use the criteria for scope (§ 1508.25) to determine which proposal(s) shall be the subject of a particular statement. Proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.

(b) Environmental impact statements may be prepared, and are sometimes required, for broad Federal actions such as the adoption of new agency programs or regulations (§ 1508.18). Agencies shall prepare statements on broad actions so that they are relevant to policy and are timed to coincide with meaningful points in agency planning and decisionmaking.

(c) When preparing statements on broad actions (including proposals by more than one agency), agencies may find it useful to evaluate the proposal(s) in one of the following ways:

(1) Geographically, including actions occurring in the same general location, such as body of water, region, or metropolitan area.

(2) Generically, including actions which have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, media, or subject matter.

(3) By stage of technological development including federal or federally assisted research, development or demonstration programs for new technologies which, if applied, could significantly affect the quality of the human environment. Statements shall be prepared on such programs and shall be available before the program has reached a stage of investment or commitment to implementation likely to determine subsequent development or restrict later alternatives.

(d) Agencies shall as appropriate employ scoping (§ 1501.7), tiering (§ 1502.20), and other methods listed in §§ 1500.4 and 1500.5 to relate broad and narrow actions and to avoid duplication and delay. (40 CFR 1502.4)

11.3 Identify Responsible Official(s) and Agencies Involved

The responsible official for implementing a proposed action usually is the agency employee who has the delegated authority to make the required decision(s) (FSM 1230; 1950). When an action is proposed, the responsible official must identify and contact other Federal, State, or local agencies with an interest in the action.

11.31 Determine Lead and Cooperating Agencies

Refer to definitions of lead and cooperating agency in Chapter Zero Code, Section 05.

11.31a Lead Agency

When the proposed action is on the National Forest System, the Forest Service is usually the lead agency.

The CEQ regulations address the determination and role of the lead agency as follows:

(a) A lead agency shall supervise the preparation of an environmental impact statement if more than one Federal agency either:

(1) Proposes or is involved in the same action; or

(2) Is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity.

(b) Federal, State, or local agencies, including at least one Federal agency, may act as joint lead agencies to prepare an environmental impact statement (1506.2).

(c) If an action falls within the provisions of paragraph (a) of this section the potential lead agencies shall determine by letter or memorandum which agency shall be the lead agency and which shall be cooperating agencies. The agencies shall resolve the lead agency question so as not to cause delay. If there is disagreement among the agencies, the following factors (which are listed in order of descending importance) shall determine lead agency designation:

(1) Magnitude of agency's involvement.

(2) Project approval/disapproval authority.

(3) Expertise concerning the action's environmental effects.

(4) Duration of agency's involvement.

(5) Sequence of agency's involvement.

(d) Any Federal agency, or any State or local agency or private person substantially affected by the absence of lead agency designation, may make a written request to the potential lead agencies that a lead agency be designated.

(e) If Federal agencies are unable to agree on which agency will be the lead agency or if the procedure described in paragraph (c) of this section has not resulted within 45 days in a lead agency designation, any of the agencies or persons concerned may file a request with the council asking it to determine which Federal agency shall be the lead agency. A copy of the request shall be transmitted to each potential lead agency. The request shall consist of:

(1) A precise description of the nature and extent of the proposed action.

(2) A detailed statement of why each potential lead agency should or should not be the lead agency under the criteria specified in paragraph (c) of this section.

(f) A response may be filed by any potential lead agency concerned within 20 days after a request is filed with the Council. The Council shall determine as soon as possible but not later than 20 days after receiving the request and all responses to it which Federal agency shall be the lead agency and which other Federal agencies shall be cooperating agencies. (40 CFR 1501.5)

If a responsible Forest Service official wishes to ask the Council on Environmental Quality to determine

which Federal agency shall be the lead agency, send the request to the Director of Environmental Coordination in Washington, DC, for processing.

11.31b Cooperating With Other Agencies

Where National Forest System lands are involved, the Forest Service shall play a strong role in the preparation of environmental documents. If the Forest Service is the lead agency, promptly request in writing that all other Federal agencies with jurisdiction by law or special expertise (sec. 05) become cooperating agencies.

The CEQ regulations address the role of the lead and cooperating agencies' responsibilities as follows:

The purpose of this section is to emphasize agency cooperation early in the NEPA process. Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other Federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency. An agency may request the lead agency to designate it a cooperating agency.

(a) The lead agency shall:

(1) Request the participation of each cooperating agency in the NEPA process at the earliest possible time.

(2) Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency.

(3) Meet with a cooperating agency at the latter's request.

(b) Each cooperating agency shall:

(1) Participate in the NEPA process at the earliest possible time.

(2) Participate in the scoping process (described below in (1501.7).

(3) Assume on request of the lead agency responsibility for developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has special expertise.

(4) Make available staff support at the lead agency's request to enhance the latter's interdisciplinary capability.

(5) Normally use its own funds. The lead agency shall, to the extent available funds permit, fund those major activities or analyses it requests from cooperating agencies. Potential lead agencies shall include such funding requirements in their budget requests. (c) A cooperating agency may in response to a lead agency's request for assistance in preparing the environmental impact statement (described in paragraph (b) (3), (4), or (5) of this section) reply that other program commitments preclude any involvement or the degree of involvement requested in the action that is the subject of the environmental impact statement. A copy of this reply shall be submitted to the Council. (40 CFR 1501.6.)

When National Forest System lands are involved and the Forest Service is not the lead agency, the responsible Forest Service official shall request participation as a cooperating agency in scoping, environmental analysis, and documentation. The Forest Service may also be a lead or cooperating agency when State and private forest lands are involved.

If the Forest Service is asked to be a cooperating agency and other program commitments preclude being able to become involved, the responsibile official shall consult with the Director of Environmental Coordination in Washington, DC. prior to preparing a reply to this effect to the requesting agency. Send two copies of this reply to the Director of Environmental Coordination in Washington, DC. for transmittal to the Council on Environmental Quality.

11.4 Determine if Existing Documents Address the Proposed Action

During scoping, determine which existing documents are pertinent to the environmental analysis. Existing environmental documents, higher level plans such as Regional Guides, Land and Resource Management Plans or Regional Vegetation Management Plans, and other pertinent documents or data sources may provide useful information to:

1. Help define the proposed action.
2. Narrow the scope of analysis.
3. Estimate potential environmental effects.
4. Reduce the bulk of the documentation.

In such cases, all or parts of these existing documents may be tiered to, adopted, or incorporated by reference (secs. 05, 25.1, 25.2, and 22.32).

11.5 Look for Preliminary Issues, Identify Public Participation Needs

11.51 Identify Preliminary Issues

Based on reviews of similar actions, knowledge of the area or areas involved, discussions with interested and affected persons, community leaders, organizations, and/or consultations with experts and other agencies familiar with such actions and their direct, indirect, and cumulative effects, prepare and evaluate preliminary issues for possible significance. This review provides an early look at potential issues and sharpens the focus of the environmental analysis and provides a means for:

(d) Identifying at an early stage the significant environmental issues deserving of study and deemphasizing insignificant issues, narrowing the scope of the environmental impact statement accordingly. (40 CFR 1501.1(d))

11.52 Identify Public Participation Needs

Review and consider comments and suggestions offered by interested and affected agencies, organizations, and individuals in response to the entry on the calendar of proposed actions (sec. 11.1). Consider options for involving potentially interested and affected agencies, organizations, and persons in the analysis process. (See FSH 1609.13, Public Participation Handbook, for information on techniques to involve the public in Forest Service planning and decisionmaking).

The CEQ regulations provide the following direction on public notice and participation:

Agencies shall: * * *

(b) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected.

(1) In all cases the agency shall mail notice to those who have requested it on an individual action.

(2) In the case of an action with effects of national concern notice shall include publication in the **Federal Register** and notice by mail to national organizations reasonably expected to be interested in the matter * * * An agency engaged in rulemaking may provide notice by mail to national organizations who have requested that notice regularly be provided. Agencies shall maintain a list of such organizations.

(3) In the case of an action with effects primarily of local concern the notice may include:

(i) Notice to State and areawide clearinghouses * * *

(ii) Notice to Indian tribes when effects may occur on reservations.

(iii) Following the affected State's public notice procedures for comparable actions.

(iv) Publication in local newspapers (in papers of general circulation rather than legal papers).

(v) Notice through other local media.

(vi) Notice to potentially interested community organizations including small business associations.

(vii) Publication in newsletters that may be expected to reach potentially interested persons.

(viii) Direct mailing to owners and occupants of nearby or affected property.

(ix) Posting of notice on and off site in the area where the action is to be located.

(c) Hold or sponsor public hearings or public meetings whenever appropriate or in accordance with statutory requirements applicable to the agency. Criteria shall include whether there is:

(1) Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.

(2) A request for a hearing by another agency with jurisdiction over the action supported by reasons why a hearing will be helpful. If a draft environmental impact

statement is to be considered at a public hearing, the agency should make the statement available to the public at least 15 days in advance (unless the purpose of the hearing is to provide information for the draft environmental impact statement).

(d) Solicit appropriate information from the public. (40 CFR 1506.6)

11.6 Determine If Proposal Can Be Categorically Excluded from Documentation in an Environmental Impact Statement or an Environmental Assessment

After determining the nature of the proposed action; identifying the interested and affected agencies, organizations, and individuals; and the extent of existing documentation, the responsible official should have sufficient data to determine if the proposed action can be categorically excluded from documentation in an environmental impact statement or an environmental assessment or if an environmental impact statement should be prepared.

If the proposed action falls within one of the categories in the Department of Agriculture policies and procedures (7 CFR 1b.3(a)) or one of the categories listed in section 32 and if the proposed action does not involve any extraordinary circumstances (sec. 31), the action may be categorically excluded from documentation in an EIS or EA.

If required by Chapter 30, record a decision to categorically exclude a proposed action from documentation in a decision memo.

At this point it may be possible to determine if an environmental impact statement should be prepared. If the proposed action falls within one of the classes of actions which require preparation of an environmental impact statement in section 20.6, or if preliminary analysis indicates that there may be significant effects on the environment, prepare a notice of intent to prepare an environmental impact statement for publication in the **Federal Register**.

11.7 Inform Participants and the Public of Results of Scoping and the Progress of the Analysis

Consistent with the importance of the proposed action, keep the public informed of the progress of the environmental analysis through appropriate means. This may include personal contacts with individuals, organizations, and local government officials; use of local media sources; and Forest or Regional newsletters.

Enter the status of the environmental analysis, the decision memo, or the notice of intent to prepare an environmental impact statement on the calendar of proposed actions. Monitor and consider the concerns of interested and affected agencies, organizations, and persons, and respond to individual requests for information.

12 Use Interdisciplinary Analysis

Section 102(2)(A) of the National Environmental Policy Act requires all agencies to use an interdisciplinary approach to analysis which will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and decisionmaking which may have an impact on the human environment. The CEQ regulations require that:

The disciplines of the preparers shall be appropriate to the scope and issues identified in the scoping process (1501.7). (40 CFR 1502.6).

Use interdisciplinary teams to analyze proposed actions with the potential for significant environmental effects, especially if an environmental impact statement may be needed.

Proposals for less complex actions may not require the selection of an interdisciplinary team. A knowledgeable individual may perform the analysis, which must consider all of the physical, biological, social, and economic factors pertinent to the decision.

Interdisciplinary review of the analysis also may satisfy the requirement for use of the interdisciplinary approach.

12.1 Interdisciplinary Team Selection

The responsible official must select the leader and other members of the interdisciplinary team, define their tasks, and keep abreast of their work.

The disciplines and skills of this group must be appropriate to the scope of the action and the issues identified. The team may consist of whatever combination of Forest Service staff and other Federal Government personnel is necessary to provide the necessary analytical skills. The team must have the expertise to identify and to evaluate the potential direct, indirect, and cumulative social, economic, physical, and biological effects of the proposed action and its alternatives (sec. 05, definition 31). Limit the team to a manageable number of persons.

12.1a Team Leader

To ensure selection of an effective team leader, the responsible official should consider such factors as the individual's:

1. Degree of working knowledge of the National Environmental Policy Act process and the interrelationship with the National Forest Management Act and other applicable laws and regulations.

2. Ability to communicate effectively with team members and the responsible official and to facilitate interaction among team members.

3. Ability to organize, analyze, and interpret information.

4. Past performance in meeting assigned deadlines.

12.1b Other Team Members

In selecting other team members, consider such factors as:

1. Variety of disciplines needed.

2. Ability to work as part of a team.

3. Ability to communicate to others information about the field or speciality that a member represents.

4. Knowledge of and degree of experience in the environmental analysis process.

5. Ability to conceptualize and solve problems.

12.2 Selection of Interdisciplinary Analyst(s)

The responsible official may select one or more persons to conduct the required interdisciplinary analysis. The analyst(s) must have a working knowledge of the National Environmental Policy Act process and its relationship to forest planning, other applicable statutes and regulations, and natural resource interactions.

12.3 Role of the Interdisciplinary Team or Analyst(s)

The team or assigned analyst is responsible for identifying the issues to be analyzed in detail in the subsequent environmental analysis and for preparation of environmental documents. A team integrates its collective knowledge of the physical, biological, economic, and social sciences and the environmental design arts into the analysis process. Interaction among team members often provides insight that otherwise would not be apparent. The role of the ID team or analyst(s) includes, but is not limited to:

12.3a Expand Public Involvement as Appropriate

Depending on the nature and complexity of the environmental analysis required for a proposed action, a diligent effort may be necessary to involve the public in the planning, analysis, and decisionmaking processes. This effort may include:

1. *Identifying target groups.* Identify potentially affected groups and the nature of their concerns (FSH 1609.13). Maintain and use mailing lists as appropriate.

2. *Determining the methods of public participation.* Establish the level of needed public participation. Ensure that the level of effort to inform and to involve the public is consistent with the scale and importance of the proposed action and the degree of public interest.

When extensive public involvement is necessary, prepare a formal public participation plan (FSM 1626). The Public Participation Handbook, FSH 1609.13, provides guidance in identifying and involving the public, preparing public involvement plans, and using public responses in the analysis process. Invite participation from potentially interested and affected Federal, State, and local agencies; Indian tribes; interested individuals and groups; and others who may be affected by the proposed action or its alternatives.

12.3b Formulate Analysis and Evaluation Criteria

Development of criteria or standards may be necessary to guide the analysis process. Analysis and evaluation criteria or standards may be needed to:

1. Identify and select data sources, analysis methods, and set standards of accuracy.
2. Determine the depth or detail of the analysis.
3. Develop a suitable range of alternatives.
4. Evaluate alternatives.
5. Estimate the significance of environmental effects (sec. 05, definition 38).

When formulating analysis and evaluation criteria or standards, be sure to consider Forest Service objectives identified in legislation, policies, plans, and by the public. Refine these criteria and standards, as necessary, during the course of the analysis.

12.3c Finalizing Issues

Decide on the significant issues which will be considered, taking interested and affected agency, organization, and public comments into account. Adjust and refine these issues as necessary as new insights and information emerge during analysis.

12.3d Exploring Alternatives

Consider a full range of reasonable alternatives to the proposed action that are responsive to the significant issues.

During scoping and the subsequent public participation activities, discuss the feasibility and possible effects of these alternatives with potentially interested and affected agencies, organizations, and persons. The ID team and the responsible official decide which alternatives merit further study and which do not require detailed analysis.

13 Collect and Interpret Data

The type and amount of data to collect depend on the nature of the action, agency objectives, issues, and the scope, context, and intensity of anticipated effects. Focus data collection on the current and expected physical, biological, economic, and social conditions affecting or affected by the proposed action. When appropriate, document the assumptions, methods, and data sources.

Section 22.34 sets forth the requirements for addressing incomplete or unavailable information within an environmental impact statement. If, when evaluating significant adverse effects on the human environment, and information that is essential to a reasoned choice among alternatives is either missing or incomplete, CEQ requires the agency to obtain the data if it is essential to a reasoned choice among alternatives. However, the agency is not required to obtain missing information at an exorbitant price or when there is no known means to obtain it.

In such a case, the responsible official must:

1. Determine the relevance of the missing information to evaluating reasonably foreseeable significant adverse impacts on the human environment;
2. Be able to cite existing credible scientific evidence relevant to evaluating those adverse impacts; and
3. Evaluate those impacts based upon either theoretical approaches or research methods generally accepted in the scientific community.

As used in the CEQ regulations, "reasonably foreseeable" includes:

> * * * impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason. (40 CFR 1502.22)

When evaluating reasonably foreseeable adverse impacts for which essential information is incomplete or unavailable, consider a range of possible scenarios. These should include a scenario that would most likely occur and ones that would be less likely but have the most severe impacts you could reasonably expect. When possible, include a discussion of relative probabilities of occurrence for each scenario.

14 Develop Alternatives

Based on the results of scoping and the determination of issues to be analyzed in detail, develop and consider all reasonable alternatives to the proposed action. The phrase "all reasonable alternatives" established in case law interpreting the National Environmental Policy Act has not been interpreted to require that an infinite or unreasonable number of alternatives be analyzed.

14.1 No-Action Alternatives

Consider the no-action alternative in detail in each environmental analysis. The no-action alternative provides a baseline for estimating the effects of other alternatives.

Two distinct interpretations of no-action are often possible, depending on the nature of the proposed action being evaluated. The first interpretation involves an action such as the initial approval or updating of a land and resource management plan where ongoing programs initiated under the existing plan continue, even as new plans are being developed. In these cases the no-action alternative means no change from current management direction. Consequently, the responsible official would compare the projected impacts of alternative management schemes to those impacts projected for the existing plans.

The second interpretation of no-action is that no-action or activity would take place, such as when proposals for projects are denied.

The nature and scope of the proposed action will aid the responsible official in determining which interpretation is appropriate to the analysis.

14.2 Other Alternatives

Develop other alternatives fully and impartially. Ensure that the range of alternatives does not foreclose prematurely options that might protect, restore, and enhance the environment. Consider reasonable alternatives even if outside the jurisdiction of the Forest Service. Modify alternatives or develop new alternatives as necessary as the analysis proceeds. Alternatives must specify any activities that may produce important environmental changes, and they must address management requirements, mitigation measures, and monitoring of environmental effects.

14.3 Alternatives Not Considered in Detail

Describe the alternatives not considered in detail, briefly discuss the reasons for their being eliminated, and include this information in the project

file. If an environmental impact statement is required, this information must be disclosed in the chapter on alternatives. [sec. 22.3, 5].

15 Estimate Effects of Each Alternative

For each alternative, estimate the direct, indirect, and cumulative environmental effects including the effectiveness of the mitigation measures, that would result from implementing each of the alternatives, including the no-action alternative. Also identify any additional mitigation measures that may be required, such as measures common to all alternatives.

Express the effects in terms of changes that would occur in the physical (land, water, air), biological (plants and animals), economic (money passing through society), and social (the way people live) components of the human environment. Consider the magnitude, duration, and significance of the changes. See section 61 for a more specific list of environmental factors.

When analysis and disclosure of social and/or economic impacts are important to a reasoned decision, follow the direction in FSM 1970 and FSH 1909.17. Also consider unquantifiable environmental amenities and values.

For all alternatives be sure to consider the environmental effects on the following:

1. Consumers, civil rights, minority groups, and women (FSM 1730).
2. Prime farmland, rangeland, and forest land (Departmental Regulation 9500–3, sec. 65.21).
3. Wetlands and flood plains (sec. 05, definition 41).
4. Threatened and endangered species (FSM 2670).
5. Cultural resources (FSM 2360).

15.1 Cumulative Effects (sec. 05, definition 7)

Individual actions when considered alone may not have a significant impact on the quality of the human environment. Groups of actions, when added together, may have collective, or cumulative, impacts which are significant. Cumulative effects can occur without regard to land ownership boundaries. Consideration must be given to the incremental effects of past, present, and reasonably foreseeable related future actions of the Forest Service, as well as those of other agencies and individuals.

16 Evaluate Alternatives and Identify Preferred Alternative(s)

Compare alternatives on the basis of their effects on the human environment. Although the ID Team may make a recommendation based on the results of the interdisciplinary analysis, the responsible official identifies the preferred alternative(s).

When the Chief or the Secretary is the responsible official, the Washington Office (WO) Environmental Coordination Staff participates with appropriate field units or other WO staff(s) and with the appropriate Deputy Chief, Chief, or Assistant Secretary to identify the preferred alternative(s).

17 Determine Type of Environmental Document Needed

The significance of environmental effects of a proposed action determines whether an environmental impact statement must be prepared (sec. 05, definition 38).

If the proposed action may have significant environmental effects, prepare an environmental impact statement (ch. 20). "Significance" is discussed in section 05. Otherwise, prepare an environmental assessment (ch. 40).

Ther CEQ regulations provide the following direction on whether to prepare an environmental impact statement:

> In determining whether to prepare an environmental impact statement the Federal agency shall:
>
> (a) Determine under its procedures supplementing these regulations * * * whether the proposal is one which:
>
> (1) Normally requires an environmental impact statement, or
>
> (2) Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).
>
> (b) If the proposed action is not covered by paragraph (a) of this section prepare an environmental assessment (§ 1508.9). The agency shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing assessments required by § 1508.9(a)(1).
>
> (c) Based on the environmental assessment make its determination whether to prepare an environmental impact statement.
>
> (d) Commence the scoping process (§ 1501.7), if the agency will prepare an environmental impact statement. (40 CFR 1501.4)

18 Review of New Information on Impacts Received After a Decision Has Been Made

If new information or changed circumstances relating to the environmental impacts of a proposed action come to the attention of the responsible official after a decision has been made and prior to completion, he or she must review the information carefully to determine the importance of the information.

If the responsible official considers the new information within the context of the overall proposal and determines that a supplement or change to an environmental document is not necessary and a new decision is not required, continue implementation. Document the results of the interdisciplinary review process in the planning record or in the case file.

18.1 Decisions Based on an Environmental Impact Statement

CEQ regulations require:

> (c) Agencies:
>
> (1) Shall prepare supplements to either draft or final environmental impact statements if:
>
> (i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or
>
> (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.
>
> * * * * *
>
> (4) Shall prepare, circulate, and file a supplement to a statement in the same fashion (exclusive of scoping) as a draft and final statement * * *. (40 CFR 1502.9(c))

If the responsible official determines, based on the above, that a supplement to an environmental impact statement is appropriate, issue a notice of intent to prepare an environmental impact statement. Also issue a record of decision based on the supplement. Follow the instructions in Chapter 20.

18.2 Decisions Based on an Environmental Assessment and Finding of No Significant Impact

Prepare a supplement to an environmental assessment if:

(a) The analysis of the new information or changed circumstances indicates changes in the proposed action may be needed to address environmental concerns; or

(b) the new information or circumstances are relevant to environmental concerns and bear on the proposed action or its impacts.

Prepare a new finding of no significant impact which considers the impacts disclosed in both the environmental assessment and the supplement. If the decision is changed, issue a new decision notice. If the decision is unchanged, do not issue a new decision notice. Follow the instructions in Chapter 40.

If, based on the environmental assessment and the supplement, a finding of no significant impact cannot be prepared, issue a notice of intent to prepare an environmental impact

statement. Follow the instructions in Chapter 20.

18.3 Decisions for Which a Case File and Decision Memo Have Been Prepared

Take no further action if review of the new information shows that the proposed action still fits within the identified category in 31.2 and no extraordinary circumstances exist. Issue a new decision memo if the new information or changed circumstances require a new or changed decision. Follow the instructions in Chapter 30.

If the new information indicates that extraordinary circumstances are now present and the proposed action may have a significant impact on the human environment, file a notice of intent to prepare an environmental impact statement. Follow the instructions in Chapter 20.

If the new information indicates that extraordinary circumstances are now present but the significance of the impacts on the human environment are uncertain, prepare an environmental assessment. Follow the instructions in Chapter 40.

18.4 Decisions Which Have Been Categorically Excluded from Documentation and for Which a Case File and Decision Memo Have Not Been Prepared

Implement the proposed action if an interdisciplinary review of the new information or extraordinary circumstances shows that the proposed action still fits within the identified category in Section 31.1 and no extraordinary circumstances exist.

If the new information indicates that extraordinary circumstances are now present and the proposed action may have a significant impact on the human environment, file a notice of intent to prepare an environmental impact statement. Follow the instructions in Chapter 20.

If the new information indicates that extraordinary circumstances are now present but the significance of the impacts on the human environment are uncertain, prepare an environmental assessment. Follow the instructions in Chapter 40.

Prepare a case file and decision memo if the proposed action fits within a category in § 31.2, Follow the instructions in Chapter 30.

Chapter 20—Environmental Impact Statements and Related Documents

Contents

20.6 Classes of Actions Requiring Environmental Impact Statements

Classes of actions that require preparation of environmental impact statements are listed below. Examples of actions are included.

The requirements for classes 2, 3, and 4 may be met by the appropriate use of program environmental impact statements and tiered site-specific environmental documents or by the preparation of site-specific environmental impact statements.

1. *Proposed actions for which an environmental impact statement is required by law or regulation.* Examples include:

a. Preparing or revising a land and resource management plan required by the National Forest Management Act (36 CFR 219.10).

b. Proposing that Congress enact legislation to designate a wilderness or a wild and scenic river (40 CFR 1506.8).

2. *Proposals to carry out or to approve the operational aerial application of chemical pesticides.* Examples include:

a. Applying chemical insecticides by helicopter on an area infested with spruce budworm to prevent serious resource loss.

b. Authorizing the application of herbicides by helicopter on a major utility corridor to control unwanted vegetation.

c. Applying herbicides by fixed-wing aircraft on an area to release trees from competing vegetation.

3. *Proposals that would substantially alter the undeveloped character of an inventoried roadless area (FSH 1909.12) of 5,000 acres or more.* Examples include:

a. Proposed road construction and associated timber harvesting in a 56,000-acre inventoried roadless area where the proposed road and harvest units impact 3,000 acres in only one part of the roadless area.

b. Construction or reconstruction of water reservoir facilities in a 5,000-acre unroaded area where flow regimens may be substantially altered.

c. Issuance of a special use permit in an unroaded area of more than 5,000 acres that would involve substantial surface disturbing activities such as approval of an operations plan for a mine or approval of a permit to develop a ski resort.

4. *Proposals to take major Federal actions that may significantly effect the quality of the human environment.*

21 Notices of Intent

21.1 Preparation and Distribution of Notices of Intent

Prepare and publish a notice of intent in the **Federal Register** as soon as practicable after deciding that an environmental impact statement (EIS) will be prepared. The purpose of a notice of intent to prepare an environmental impact statement is to begin the scoping process for the EIS.

CEQ regulations require that

* * * The notice shall briefly:

(a) Describe the proposed action and possible alternatives.

(b) Describe the agency's proposed scoping process including whether, when, and where any scoping meetings will be held.

(c) State the name and address of a person within the agency who can answer questions about the proposed action and the environmental impact statement. (40 CFR 1508.22)

In addition, the notice of intent must include the following information:

a. Name and address of the responsible official(s);

b. A description of the nature and scope of the proposed action and the decision to be made;

c. Tentative or preliminary issues and alternatives which have been identified;

d. Identification of permits or licenses required to implement the proposed action and the issuing authority;

e. The lead, joint lead, or cooperating agencies (sec. 05, definitions).

f. The estimated dates (month and year) for filing the draft and final EIS;

g. An address to which comments may be mailed;

h. The reviewer's obligation to comment during the review period rather than after completion of the final environmental impact statement. Use the following standard paragraphs:

The comment period on the draft environmental impact statement will be [enter correct time period (45-day minimum)] from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon v. Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the [enter correct time period] comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

Follow the **Federal Register** document preparation requirements and mailing instructions in section 67. Send one copy of the signed notice of intent to the Washington Officer Director of Environmental Coordination (hard copy: Chief (1950); DG address: EC:w01c). When the Chief or the Secretary is the responsible official, the appropriate field unit or WO staff shall prepare the notice of intent and send it to the WO Environmental Coordination Staff for review, processing, and submission to the Office of the Federal Register.

Once the title of the EIS under preparation has been identified in the notice of intent, use the same title on the cover of the draft and final environmental impact statement.

21.2 Revision of Notices of Intent

The official responsible for preparation of an environmental impact statement (EIS) must notify the appropriate Regional Station, or Area Environmental Coordinator and the Washington Office Director of Environmental Coordination whenever there is a major change in the information shown in the notice of intent. Major changes may require publishing a revised notice of intent in the **Federal Register** (sec. 21.1).

Examples of major changes can require a revised notice of intent are:

1. A delay of more than six months in filing either the draft or final EIS;

2. A change in the proposed action or the decision to be made; or

3. A change in the responsible official.

A revised notice of intent shall reference the date and page number of all prior notices relevant to the proposed action which were published in the **Federal Register**. Prepare and distribute a revised notice of intent in the same manner as the original (sec. 21.1).

21.3 Cancellation of a Notice of Intent

Publish a cancellation notice in the **Federal Register** to terminate the environmental analysis process if, after publication of a notice of intent or distribution of a draft EIS, a decision on a proposed action is no longer necessary. A cancellation notice must refer to the date(s) and page number(s) of previously published notice(s) of intent or the notice of availablility of an EIS which were published in the **Federal Register**. Prepare and distribute a cancellation notice in the same manner as the notice of intent (sec. 21.1). In addition, send a copy of the cancellation notice to the Environmental Protection Agency's Office of Federal Activities (sec. 22.4).

When the Chief or the Secretary is the responsible official, the appropriate field unit or WO staff prepares the cancellation notice as soon as there is a decision to terminate the process and sends the notice to the Director of Environmental Coordination for review, processing, and submission to the Office of the Federal Register and Environmental Protection Agency's Office of Federal Activities.

22 Environmental Impact Statements—Uniform Requirements (Section 05, definitions)

The CEQ regulations identify the following requirements for EISs:

As required by sec. 102(2)(C) of NEPA environmental impact statements (§ 1508.11) are to be included in every recommendation or report.

On proposals (§ 1508.23).

For legislation and (§ 1508.17).

Other major Federal actions (§ 1508.18).

Significantly (§ 1508.27).

Affecting (§ 1508.3, 1508.8).

The quality of the human environment (§ 1508.14). (40 CFR 1502.3)

22.1 Page Limits

The text of final environmental impact statements * * * shall normally be less than 150 pages and for proposals of unusual scope or complexity shall normally be less than 300 pages. (40 CFR 1502.7)

22.2 Writing

Environmental impact statements shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can readily understand them. (40 CFR 1502.8)

22.3 Content and Format

An environmental impact statement must contain the following:

Agencies shall use a format for environmental impact statements which will encourage good analysis and clear presentation of the alternatives including the proposed action. The following standard format for environmental impact statements should be followed unless the agency determines that there is a compelling reason to do otherwise:

(a) Cover sheet.
(b) Summary.
(c) Table of contents.
(d) Purpose of and need for action.
(e) Alternatives including proposed action (sections 102(2)(C)(iii) and 102(2)(E) of the Act).
(f) Affected environment.
(g) Environmental consequences (especially sections 102(2)(C) (i), (ii), (iv), and (v) of the Act).
(h) List of preparers.
(i) List of Agencies, Organizations, and persons to whom copies of the statement are sent.
(j) Index.
(k) Appendices (if any).

If a different format is used, it shall include paragraphs (a), (b), (c), (h), (i), and (j), of this section and shall include the substance of paragraphs (d), (e), (f), (g), and (k) of this section, * * * (40 CFR 1502.10)

1. *Cover Sheet.* The cover sheet shall not exceed one page. It shall include:

(a) A list of the responsible agencies including the lead agency and any cooperating agencies.

(b) The title of the proposed action that is the subject of the statement (and if appropriate the titles of related cooperating agency actions), together with the State(s) and county(ies) (or other jurisdiction if applicable) where the action is located.

(c) The name, address, and telephone number of the person at the agency who can supply further information.

(d) A designation of the statement as a draft, final, or draft or final supplement.

(e) A one paragraph abstract of the statement. (40 CFR 1502.11)

Also include the name, title, and address of the responsible official.

The abstract of the EIS should include the alternatives considered and identification of the preferred alternative(s) if one or more exists.

If the EIS is a draft, the cover sheet must also include the date by which comments must be received. The cover sheet for a draft environmental impact statement should contain the following statement about the reviewer's obligation to comment during the review period. It may be necessary to reduce the type size to accommodate this information.

Reviewers should provide the Forest Service with their comments during the review period of the draft environmental impact statement. This will enable the Forest Service to analyze and respond to the comments at one time and to use information acquired in the preparation of the final environmental impact statement, thus avoiding undue delay in the decisionmaking process. Reviewers have an obligation to structure their participation in the National Environmental Policy Act process so that it is meaningful and alerts the agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel* (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Comments on the draft environmental impact statement should be specific and should address the adequacy of the statement and the merits of the alternatives discussed (40 CFR 1503.3).

2. *Summary.*

Each environmental impact statement shall contain a summary which adequately and accurately summarizes the statement. The summary shall stress the major conclusions, areas of controversy (including issues raised by agencies and the public), and the issues to be resolved (including the choice among alternatives). The summary will normally not exceed 15 pages. (40 CFR 1502.12)

3. *Table of Contents.* List the major sections as well as a list of tables and exhibits.

4. *Purpose and Need.* The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action. (40 CFR 1502.13)

5. *Alternatives Including the Proposed Action.* This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (§ 1502.15) and the Environmental Consequences (§ 1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this section agencies shall:

(a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

(b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.

(c) Include reasonable alternatives not within the jurisdiction of the lead agency.

(d) Include the alternative of no action.

(e) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.

(f) Include appropriate mitigation measures not already included in the proposed action or alternatives. (40 CFR 1502.14)

Additionally, for proposed actions on National Forest System lands, the description of each alternative should state whether or not it is consistent with the Forest Land and Resource Management Plan (36 CFR 219.10(c)).

6. *Affected Environment.* The environmental impact statement shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration. The descriptions shall be no longer than is necessary to understand the effects of the alternatives. Data analyses in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced.

Agencies shall avoid useless bulk in statements and shall concentrate effort and attention on important issues. Verbose descriptions of the affected environment are themselves no measure of the adequacy of an environmental impact statement. (40 CFR 1502.15)

7. *Environmental Consequences.* This section forms the scientific and analytic basis for the comparisons under § 1502.14. It shall consolidate the discussions of those elements required by sections 102(2)(C) (i), (ii), (iv), and (v) of NEPA which are within the scope of the statement and as much of section 102(2)(C)(iii) as is necessary to support the comparisons. The discussion will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources

which would be involved in the proposal should it be implemented. This section should not duplicate discussions in § 1502.14. It shall include discussions of:

(a) Direct effects and their significance (§ 1508.8).

(b) Indirect effects and their significance (§ 1508.8).

(c) Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned. (See § 1506.2(d).)

(d) The environmental effects of alternatives including the proposed action. The comparisons under § 1502.14 will be based on this discussion.

(e) Energy requirements and conservation potential of various alternatives and mitigation measures.

(f) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.

(g) Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.

(h) Means to mitigate adverse environmental impacts (if not fully covered under (1502.14(f)). (40 CFR 1502.16)

8. *List of Preparers.* The environmental impact statement shall list the names, together with their qualifications (expertise, experience, professional disciplines), of the persons who were primarily responsible for preparing the environmental impact statement or significant background papers, including basic components of the statement (§§ 1502.6 and 1502.8). Where possible the persons who are responsible for a particular analysis, including analyses in background papers, shall be identified * * * (40 CFR 1502.17)

9. *List of Agencies, Organizations, and Persons to Whom Copies of the Statement Are Sent.* The list should include names only and not addresses.

10. *Index.* All environmental impact statements (EISs) must include indexes. The purpose of an index is to make the information in the EIS fully available to the reader without delay. See section 62 for preparation of indexes.

11. *Appendix.* If an agency prepares an appendix to an environmental impact statement the appendix shall:

(a) Consist of material prepared in connection with an environmental impact statement (as distinct from material which is not so prepared and which is incorporated by reference (§ 1502.21)).

(b) Normally consist of material which substantiates any analysis fundamental to the impact statement.

(c) Normally be analytic and relevant to the decision to be made.

(d) Be circulated with the environmental impact statement or be readily available on request. (40 CFR 1502.18)

22.31 Tiering

Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review (§ 1508.28). Whenever a broad environmental impact statement has been prepared (such as a program or policy statement) and a subsequent statement or environmental assessment is then prepared on an action included within the entire program or policy (such as a site specific action) the subsequent statement or environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action. The subsequent document shall state where the earlier document is available. Tiering may also be appropriate for different stages of actions. (40 CFR 1502.20)

The environmental impact statement which accompanies a land and resource management plan is an example of a "broad" EIS prepared for a program or policy statement.

22.32 Adoption

(a) An agency may adopt a Federal draft or final environmental impact statement or portion thereof provided that the statement or portion thereof meets the standards for an adequate statement under these regulations.

(b) If the actions covered by the original environmental impact statement and the proposed action are substantially the same, the agency adopting another agency's statement is not required to recirculate it except as a final statement. Otherwise the adopting agency shall treat the statement as a draft and recirculate it (except as provided in paragraph (c) of this section).

(c) A cooperating agency may adopt without recirculating the environmental impact statement of a lead agency when, after an independent review of the statement, the cooperating agency concludes that its comments and suggestions have been satisfied.

(d) When an agency adopts a statement which is not final within the agency that prepared it, or when the action it assesses is the subject of a referral under Part 1504, or when the statement's adequacy is the subject of a judicial action which is not final, the agency shall so specify. (40 CFR 1506.3).

22.33 Incorporation by Reference

Agencies shall incorporate material into an environmental impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. The incorporated material shall be cited in the statement and its content briefly described. No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Material based on proprietary data which is itself not available for review and comment shall not be incorporated by reference. (40 CFR 1502.21)

22.34 Incomplete or Unavailable Information

Refer to section 13 of this handbook. Systematically respond to all of the following:

When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking.

(a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statements.

(b) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known, the agency shall include within the environmental impact statements:

(1) A statement that such information is incomplete or unavailable; (2) a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment; (3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment, and (4) the agency's

evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community. For the purposes of this section, "reasonably foreseeable" includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule or reasons. (40 CFR 1502.22)

22.35 Documentation of Cost-Benefit Analysis

If a cost-benefit analysis relevant to the choice among environmentally different alternatives is being considered for the proposed action, it shall be incorporated by reference or appended to the statement as an aid in evaluating the environmental consequences. To assess the adequacy of compliance with section 102(2)(B) of the Act the statement shall, when a cost-benefit analysis is prepared, discuss the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities. For purposes of complying with the Act, the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations. In any event, an environmental impact statements should at least indicate those considerations, including factors not related to environmental quality, which are likely to be relevant and important to a decision. (40 CFR 1502.23)

22.36 Identification of Methodology and Scientific Accuracy

Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement. An agency may place discussion of methodology in an appendix. (40 CFR 1502.24)

22.4 Filing, Circulation, and Availability of Environmental Impact Statements

Environmental impact statements together with comments and responses shall be filed with the Environmental Protection Agency, attention Office of Federal Activities (A–104), 401 M Street SW., Washington, DC 20460. Statements shall be filed with EPA no earlier than they are also transmitted to commenting agencies and made available to the public. (40 CFR 1506.9)

* * * * *

Agencies shall circulate the entire draft and final environmental impact statements except for certain appendices as provided in § 1502.18(d) and unchanged statements as provided in § 1503.4(c). However, if the statement is unusually long, the agency may circulate the summary instead, except that the entire statement shall be furnished to:

(a) Any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, State or local agency authorized to develop and enforce environmental standards.

(b) The applicant, if any.

(c) Any person, organization, or agency requesting the entire environmental impact statement.

(d) In the case of a final environmental impact statement any person, organization, or agency which submitted substantive comments on the draft.

If the agency circulates the summary and thereafter receives a timely request for the entire statement and for additional time to comment, the time for that requestor only shall be extended by at least 15 days beyond the minimum period. (40 CFR 1502.19)

A summary of this EIS distributed as a separate document must:

a. State how other agencies, organizations, and persons can obtain or review the complete EIS.

b. Have a cover sheet attached.

23 Requirements Specific to Draft Environmental Impact Statements

23.1 Identification in Draft Environmental Impact Statements of Permits Necessary to Implement Proposal

(b) The draft environmental impact statement shall list all Federal permits, licenses, and other entitlements which must be obtained in implementing the proposal. If it is uncertain whether a Federal permit, license, or other entitlement is necessary, the draft environmental impact statement shall so indicate. (40 CFR 1502.25(b))

23.2 Circulating and Filing a Draft Environmental Impact Statement

1. Circulate a draft EIS to agencies and to the public prior to or at the same time it is transmitted to the Environmental Protection Agency (EPA) in Washington, DC. If the statement is unusually long, a summary may be circulated instead (40 CFR 1502.19). However, the responsible unit must file the entire document with EPA and furnish it to other agencies which have jurisdiction by law or special expertise. The entire EIS must also be furnished to the project proponent and other individuals and groups who have requested it.

2. File five copies of a draft EIS with the Environmental Protection Agency at the following address: Management Information Unit, Office of Federal Activities (A–104), Environmental Protection Agency, Room 2119 Mail, 401 M Street, SW., Washington, DC 20460.

EPA will then publish the Notice of Availability in the **Federal Register.**

3. The following are the mandatory mailings for all EISs prepared by the Forest Service.

ENVIRONMENTAL PROTECTION AGENCY REGIONAL OFFICE

[Regions, addresses, and number of copies are listed in Chapter 60]

	DEIS	FEIS
Director, Environmental Coordination (Chief, 1950), Forest Service—USDA, Box 96090, Washington, DC 20090–6090	5	5
Office of Environmental Affairs, Department of the Interior, MS 2340, Washington, DC 20240		
Projects east of the Mississippi River	12	7
Projects west of the Mississippi River	18	12

Always send copies of EISs to these agencies by expeditious methods of delivery. These methods also may be desirable for other key recipients. Base any other distribution to Federal agencies on agency expertise and legal jurisdiction as indicated in section 63. The addresses and number of copies required by each agency are shown in section 63.1.

3. Calculate the review period from the date after EPA's notice of availability appears in the **Federal Register.**

(a) The Environmental Protection Agency shall publish a notice in the **Federal Register** each week of the environmental impact statements filed during the preceding week. The minimum time periods set forth in this section shall be calculated from the date of publication of this notice.

* * * * *

(d) The lead agency may extend prescribed periods. The Environmental Protection Agency may upon a showing by the lead agency of compelling reasons of national policy reduce the prescribed periods and may upon a

showing by any other Federal agency of compelling reasons of national policy also extend prescribed periods, but only after consultation with the lead agency * * * Failure to file timely comments shall not be a sufficient reason for extending a period. If the lead agency does not concur with the extension of time, EPA may not extend it for more than 30 days. * * * (40 CFR 1506.10)

23.3 Solicit Comments on a DEIS

Inviting comments.

(a) After preparing a draft environmental impact statement and before preparing a final environmental impact statement the agency shall:

(1) Obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved or which is authorized to develop and enforce environmental standards.

(2) Request the comments of:

(i) Appropriate State and local agencies which are authorized to develop and enforce environmental standards;

(ii) Indian tribes, when the effects may be on a reservation; and

(iii) Any agency which has requested that it receive statements on actions of the kind proposed * * *

(3) Request comments from the applicant, if any.

(4) Request comments from the public, affirmatively soliciting comments from those persons or organizations who may be interested or affected. (40 CFR 1503.1)

Conduct public participation sessions, if appropriate. See FSH 1609.13 for suggestions on methods to involve the public in Forest Service planning and decisionmaking activities.

23.4 Extending the Comment Period on a DEIS

If the responsible official determines that an extension of the review period on the draft EIS is appropriate, notify interested and affected agencies, organizations, or persons in an appropriate manner (ch. 10). Forward one copy of the notice to EPA and one copy to the Washington Office Director of Environmental Coordination. EPA will publish the notice of the extension of the comment period in the **Federal Register** on the Friday following the week the notice is received.

24 Requirements Specific to a Final Environmental Impact Statement

24.1 Use of Comments on a Draft Environmental Impact Statement in a Final Environmental Impact Statement

1. Review, analyze, evaluate, and respond to substantive comments on the draft EIS.

(a) An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:

(1) Modify alternatives including the proposed action.

(2) Develop and evaluate alternatives not previously given serious consideration by the agency.

(3) Supplement, improve, or modify its analyses.

(4) Make factual corrections.

(5) Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

(b) All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement.

(c) If changes in response to comments are minor and are confined to the responses described in paragraphs (a) (4) and (5) of this section, agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement. In such cases only the comments, the responses, and the changes and not the final statement need be circulated ((1502.19). The entire document with a new cover sheet shall be filed as the final statement (§ 1506.9). (40 CFR 1503.4)

2. When the responsible official determines that a summary of responses is appropriate, the summary must reflect accurately all substantive comments received on the draft EIS. Comments that are pertinent to the same subject may be aggregated by categories. Avoid a general summary.

3. As a minimum, include in an appendix of a final EIS copies of all comments received on the draft EIS from Federal, State, and local agencies and elected officials.

24.2 Filing and Distributing a Final Environmental Impact Statement

1. File a final environmental EIS with the Environmental Protection Agency (EPA) as shown in 23.2, along with all substantive comments or a summary of the comments on the draft EIS. The official filing date is the date that the EPA receives the EIS, not the date that EPA's notice of availability appears in the **Federal Register**. The Washington Office Director of Environmental Coordination files with EPA the statements for which the Chief or the Secretary is the responsible official.

2. Distribute a final EIS to other agencies and to the public prior to or at the same time it is filed with EPA (40 CFR 1506.9). If the statement is unusually long, a summary may be circulated instead (40 CFR 1502.19). However, the responsible unit must file the entire document with EPA and furnish it to other persons or agencies specified in sections 23.2.

If changes resulting from comments to a draft EIS are minor, they may be written on an errata sheet and attached to the draft EIS. In this case only the comments, the responses, and the changes need to be circulated. File the entire document with a new cover sheet as the final EIS (40 CFR 1503.4(c)).

3. After filing the EIS with the EPA, ensure that a reasonable number of copies of the statement are available free of charge.

4. Calculate the implementation date from the date the legal notice of the decision is published as required by 36 CFR part 217.

24.3 Environmental Impact Statements Involving Inventoried Roadless Areas

If an EIS involves plans that allocate an inventoried roadless area or a RARE II "further planning" area(s) to nonwilderness uses, the responsible official distributes the final EIS to the public and files the final EIS with EPA in the same manner as other EISs (sec. 51).

Additionally, the responsible official must send four additional copies of the final EIS and the record of decision to the Washington Office Director of Environmental Coordination who will coordinate the transmittal to congressional committees. The implementation date begins the day the responsible official receives notice from the Director of Environmental Coordination that there has been no objection to the decision by Congress.

24.4 Corrections, Supplements, and Revisions

24.4a Corrections

Use errata sheets to make simple corrections.

24.4b Supplements

(c) Agencies:

(1) Shall prepare supplements to either draft or final environmental impact statements if:

(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or

(ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

(2) May also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.

(3) Shall adopt procedures for introducing a supplement into its formal administrative record, if such a record exists.

(4) Shall prepare, circulate, and file a supplement to a statement in the same fashion (exclusive of scoping) as a draft and final statement unless alternative procedures are approved by the Council. (40 CFR 1502.9(c))

24.4c Revisions

(a) * * * If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion * * * (40 CFR 1509(a))

Review environmental impact statements that have not been implemented or those for ongoing programs at least every 5 years to determine if they should be supplemented or revised. Distribute any corrections, supplements, and revisions to all holders of the environmental impact statement involved.

24.5 Review of Other Agency Environmental Impact Statements

Because of special agency expertise or jurisdiction by law, the Forest Service may be asked to review and comment on environmental impact statements (EISs) prepared by other agencies.

Duty to comment.

Federal agencies with jurisdiction by law or special expertise with respect to any environmental impact involved and agencies which are authorized to develop and enforce environmental standards shall comment on statements within their jurisdiction, expertise, or authority. Agencies shall comment within the time period specified for comment in (1506.10. A Federal agency may reply that it has no comment. If a cooperating agency is satisfied that its views are adequately reflected in the environmental impact statement, it should reply that it has no comment. (40 CFR 1503.2)

Specificity of comments.

(a) Comments on an environmental impact statement or on a proposed action shall be as specific as possible and may address either the adequacy of the statement or the merits of the alternatives discussed or both.

(b) When a commenting agency criticizes a lead agency's predictive methodology, the commenting agency should describe the alternative methodology which it prefers and why.

(c) A cooperating agency shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, it shall specify any additional information it needs to comment adequately on the draft statement's analysis of significant site-specific effects associated with the granting or approving by that cooperating agency of necessary Federal permits, licenses, or entitlements.

(d) When a cooperating agency with jurisdiction by law objects to or expresses reservations about the proposal on grounds of environmental impacts, the agency expressing the objection or reservation shall specify the mitigation measures it considers necessary to allow the agency to grant or approve applicable permit, license, or related requirements or concurrences. (40 CFR 1503.3)

Unless otherwise assigned by the Chief, officials in the Washington Office shall review and comment on EISs prepared on legislative proposals, Service-wide policies and regulations, or national program proposals. The Director of Environmental Coordination coordinates these reviews and responses.

24.51 Referrals to Council on Environmental Quality

(a) This part establishes procedures for referring to the Council Federal interagency disagreements concerning proposed major Federal actions that might cause unsatisfactory environmental effects. It provides means for early resolution of such disagreements.

(b) Under section 309 of the Clean Air Act (42 U.S.C. 7609), the Administrator of the Environmental Protection Agency is directed to review and comment publicly on the environmental impacts of Federal activities, including actions for which environmental impact statements are prepared. If after this review the Administrator determines that the matter is "unsatisfactory from the standpoint of public health or welfare or environmental quality," section 309 directs that the matter be referred to the Council (hereafter "environmental referrals").

(c) Under section 102(2)(C) of the Act other Federal agencies may make similar review of environmental impact statements, including judgments on the acceptability of anticipated environmental impacts. These reviews must be made available to the President, the Council and the public. (40 CFR 1504.1)

When Forest Service review of another agency's draft EIS concludes that the proposed action is environmentally unacceptable, the affected field unit shall immediately contact the WO Director of Environmental Coordination who will coordinate the referral procedure.

The 25-day time period allowed for review is extremely short; therefore, begin referral immediately after determining that the proposal is environmentally unacceptable.

25 Other Planning and Preparation Requirements for Environmental Impact Statements

25.1 Consultation Requirements

Refer to FSM 2360 for consultation requirements on archaeological and cultural resources and FSM 2670 for consultation requirements with the Fish and Wildlife Service on threatened and endangered species.

Environmental review and consultation requirements.

(a) To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and other environmental review laws and executive orders. (40 CFR 1502.25(a))

25.2 Elimination of Duplication With State and Local Procedures

(a) Agencies authorized by law to cooperate with State agencies of statewide jurisdiction pursuant to section 102(2)(D) of the Act may do so.

(b) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include:

(1) Joint planning processes.

(2) Joint environmental research and studies.

(3) Joint public hearings (except where otherwise provided by statute).

(4) Joint environmental assessments.

(c) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication

between NEPA and comparable State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include joint environmental impact statements. In such cases one or more Federal agencies and one or more State or local agencies shall be joint lead agencies. Where State laws or local ordinances have environmental impact statement requirements in addition to but not in conflict with those in NEPA, Federal agencies shall cooperate in fulfilling these requirements as well as those of Federal laws so that one document will comply with all applicable laws.

(d) To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law. (40 CFR 1506.2)

25.3 Combining Documents

Any environmental document in compliance with NEPA may be combined with any other agency document to reduce duplication and paperwork. (40 CFR 1506.4)

Examples include Wilderness Study Reports and Wild and Scenic River Study Reports which may be combined with a supporting EIS.

25.4 Federal Agencies With Legal Jurisdiction or Special Expertise

See section 63 for the Council on Environmental Quality's list of agencies with jurisdiction by law or special expertise. See § 63.1 for addresses and recommended document distribution.

26 Responsibilities When Applicants and Contractors Are Involved

The responsible official may require project proponents to conduct studies and provide data and documentation for consideration and use in preparing an EIS. However, the Forest Service does not have authority to require a proponent to prepare or fund an environmental impact statement.

Agency responsibility.

(a) Information. If an agency requires an applicant to submit environmental information for possible use by the agency in preparing an environmental impact statement, then the agency should assist the applicant by outlining the types of information required. The agency shall independently evaluate the information submitted and shall be responsible for its accuracy. If the agency chooses to use the information submitted by the applicant in the environmental impact statement, either directly or by reference, then the names of the persons responsible for the independent evaluation shall be included in the list of preparers § 1502.17. It is the intent of this paragraph that acceptable work not be redone, but that it be verified by the agency.

* * * * *

(c) Environmental impact statements. Except as provided in §§ 1506.2 and 1506.3 any environmental impact statement prepared pursuant to the requirements of NEPA shall be prepared directly by a contractor selected by the lead agency or where appropriate under § 1501.6(b), a cooperating agency. It is the intent of these regulations that the contractor be chosen solely by the lead agency, or by the lead agency in cooperation with cooperating agencies, or where appropriate by a cooperating agency to avoid any conflict of interest. Contractors shall execute a disclosure statement prepared by the lead agency, or where appropriate the cooperating agency, specifying that they have no financial or other interest in the outcome of the project. If the document is prepared by contract, the responsible Federal official shall furnish guidance and participate in the preparation and shall independently evaluate the statement prior to its approval and take responsibility for its scope and contents * * * (40 CFR 1506.5 (a) and (c)).

27 Documentation of Decisions

27.1 Timing of a Decision.

The following time limits apply to decisions supported by an environmental impact statement:

Timing of agency action.

(a) The Environmental Protection Agency shall publish a notice in the **Federal Register** each week of the environmental impact statements filed during the preceding week. The minimum time periods set forth in this section shall be calculated from the date of publication of this notice.

(b) No decision on the proposed action shall be made or recorded under § 1505.2 by a Federal agency until the later of the following dates:

(1) Ninety (90) days after publication of the notice described above in paragraph (a) of this section for a draft environmental impact statement.

(2) Thirty (30) days after publication of the notice described above in paragraph (a) of this section for a final environmental impact statement. (40 CFR 1506.10)

27.2 Record of Decision.

If an environmental impact statement has been prepared, document the decision in a record of decision. Prior to signing the record of decision, the responsible official shall read and understand the environmental impact statement.

At the time of its decision (§ 1506.10) or, if appropriate, its recommendation to Congress, each agency shall prepare a concise public record of decision. The record, which may be integrated into any other record prepared by the agency, * * *, shall:

(a) State what the decision was.

(b) Identify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency shall identify and discuss all such factors including any essential considerations of national policy which were balanced by the agency in making its decision and state how those considerations entered into its decision.

(c) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation. (40 CFR 1505.2)

The record of decision must also include consistency and conformance findings which are required by laws and regulations relevant to the decision being made.

27.21 Format and Content.

Records of decision should generally conform to the following format and must meet the following content requirements. Sections of the format may be combined or rearranged in the interest of clarity and brevity. Records of decision should reflect the analysis documented in the environmental impact statement and contain the following elements.

1. *Heading.* The heading must identify:

(a) Agency.

(b) Type of decision document, i.e., Record of Decision.

(c) The title of the proposed action.

(d) The location of the proposed action, including administrative unit, county, and state.

2. *Decision.* Describe the decision being made, including the permits, licenses, grants, or authorizations needed to implement the decision. Identify the specific location of the alternative selected, including the legal land subdivision if pertinent. Refer to or include any mitigation and monitoring program related to the decision.

3. *Public involvement conducted.* Identify the issues which determined the scope of the analysis. Provide a brief summary of the public participation that relates to the decision. Agencies, organizations, or persons raising issues or asserting opposing viewpoints may be identified and their positions discussed.

4. *Alternatives considered.* All alternatives considered (including the no-action) should be briefly discussed with specific references to the environmental impact statement. Mitigation measures, management requirements, and monitoring provisions that are pertinent to environmental concerns should be discussed with specific citations to pages of the environmental impact statement.

5. *Reasons for the decision.* This section identifies:

(a) Applicable laws, regulations, and policies.

(b) How environmental issues were considered and addressed.

(c) Factors other than environmental consequences considered in making the decision.

(d) Identification of environmental document(s) read and considered in making the decision.

6. *Findings required by other laws.* Include any findings required by any other laws. For example, findings of consistency with the forest plan, suitability, and vegetation management required by the National Forest Management Act.

7. *Identify the Environmentally Preferable Alternative.* Based on the definition in section 05, definition 16, state which alternative(s) is environmentally preferable.

8. *Implementation date.* Identify the date when the responsible official intends to implement the decision (sec. 51).

9. *Administrative review or appeal opportunities.* Clearly state whether the decision is subject to review or appeal (citing the applicable regulations), and identify when and where to file a request for review or appeal.

10. *Contact Person.* Identify the name, address, and phone number of a contact person who can supply further information.

11. *Signature and Date.* The responsible official must sign and date the record of decision on the date the decision is made.

(a) For decisions subject to review under the Forest Service appeal regulations (36 CFR 217), the responsible official may sign and date the record of decision on the date that it is transmitted with the final environmental impact statement to the Environmental Protection Agency and made available to the public.

(b) For decisions not subject to review, the responsible official must sign and date the record of decision no sooner than 30 days after EPA's notice of availability of the final environmental impact statement is published in the **Federal Register** (sec. 27.1).

(c) For legislative proposals the record of decision may be signed up to 30 days prior to filing and distributing the legislative environmental impact statement.

When an environmental impact statement identifies joint lead agencies (sec. 11.31a) or cooperating agencies with jurisdiction by law, the responsible official from each agency shall sign and date a record of decision for those actions within the authority of each.

When the Chief or Secretary is the responsible official, the appropriate field unit or WO staff prepares the record of decision with assistance from the WO Environmental Coordination Staff. The WO Environmental Coordination Staff coordinates the review and signing of the record of decision, involving the appropriate WO staff(s), Deputy Chief, Chief, or Secretary, as necessary. The signed original is then filed in WO Environmental Coordination Staff office files and the WO Environmental Coordination Staff forwards a copy to the appropriate field unit or WO staff for necessary distribution.

28 Notice and Distribution of the Record of Decision

Distribute the record of decision as soon as it is signed to agencies, organizations, and persons interested in or affected by the proposed action.

1. The responsible official shall promptly mail the record of decision to those who have requested it in writing, and to those who are known to have participated in the decisionmaking process.

2. For decisions subject to appeal under 36 CFR 217, in addition to the notice required by paragraph 1, the responsible official shall publish a notice of the availability of the record of decision in the legal section of a newspaper(s) of record with general circulation in the area where the proposed action will take place as required by 36 CFR 217. The responsible official may also elect to publish a summary of the decision or the complete text of the record of decision.

3. The responsible official will provide other forms of notice appropriate to the importance of the decision.

4. The responsible official shall enter the date of the record of decision on the calendar of proposed actions in the "status/comments" column.

When required by E.O. 12372, send copies to the State Single Point of Contact or, in cases where a State has elected not to establish a Single Point of Contact, the State official(s) involved.

Chapter 30—Categorical exclusion from Documentation

Contents

30.3 Policy.

1. A proposed action may only be categorically excluded from documentation in a environmental impact statement or environmental assessment if the proposed action:

a. Falls within one of the categories in the Department of Agriculture (USDA) policies and procedures in 7 CFR Part 1b;

b. Falls within one of the categories listed in sec. 31.1b and 31.2; and

c. Does not involve any extraordinary circumstances.

Extraordinary circumstances may include, but are not limited to, the presence of threatened and endangered species or their critical habitat; flood plains; wetlands; municipal watersheds; Congressionally designated areas, such as wilderness, wilderness study areas, or National Recreation Areas; inventoried roadless areas; Research Natural Areas; Native American religious or cultural sites; archaeological sites; or historic properties or areas.

If extraordinary circumstances are present and the proposed action may have a significant environmental effect, prepare an environmental impact statement (Ch. 20). If the need for an

environmental impact statement is uncertain, prepare an environmental assessment (Ch. 40).

If an activity has already been sufficiently analyzed in an existing environmental assessment or environmental impact statement and identified in the appropriate decision document, it can be implemented without considering the categories in this chapter 30.

If an activity has been sufficiently analyzed in an existing environmental assessment or environmental impact statement, but not identified in an appropriate decision document, issue a decision document based on the analysis without considering the categories in chapter 30.

30.5 Definitions.

1. *Categorical exclusion*—* * * a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implemenation of these regulations (1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. (40 CFR 1508.4)

2. *Decision Memo.* A concise memorandum signed by the responsible official recording a decision to take or implement an action that has been categorically excluded from documentation in either an environmental impact statement or environmental assessment.

31 Categories of Actions Excluded from Documentation.

31.1 Categories for Which a Project or Case File and Decision Memo Are Not Required.

At the discretion of the responsible official, a project or case file and a decision memo are not required but may be prepared for the categories of actions set forth in section 31.1a and 31.1b.

31.1a Categories Established by the Secretary.

The rules at 7 CFR 1b.3 exclude from documentation in an environmental impact statement or an environmental assessment the following categories:

(a) * * *

(1) Policy development, planning and implementation which relate to routine activities, such as personnel, organizational changes, or similar administrative functions;

(2) Activities which deal solely with the funding of programs, such as program budget proposals, disbursements, and transfer or reprogramming of funds;

(3) Inventories, research activities, and studies, such as resource inventories and routine data collection which such actions are clearly limited in context and intensity;

(4) Educational and informational programs and activities;

(5) Civil and criminal law enforcement and investigative activities;

(6) Activities which are advisory and consultative to other agencies and public and private entities, such as legal counseling and representation;

(7) Activities related to trade representation and market development activities abroad. (7 CFR 1b(3))

31.1b Categories Established by the Chief.

The following categories of routine administrative and maintenance actions normally do not individually or cumulatively have a significant effect (sec. 05) on the quality of the human environment and, therefore, may be categorically excluded from documentation in an environmental impact statement or environmental assessment:

1. *Proposals to issue or issuing orders pursuant to 36 CFR part 261 to provide short-term protection for sensitive resource values.* Examples include but are not limited to:

a. Issuing an order to close a road to protect bighorn sheep during lambing season.

b. Issuing an order to close an area during a period of extreme fire danger.

2. *Proposals to issue or issuance of rules, regulations, policy, or procedures which in and of themselves result in little or no environmental effects.* Examples include but are not limited to:

a. Proposing a rule to adjust special use fees.

b. Proposing to use a technical or scientific methodology or procedure for screening effects of emissions on air quality related values in Class I wildernesses.

c. Proposing a policy to defer payments on certain permits or contracts to reduce the risk of default.

d. Proposing to establish a Service-wide process for responding to offers to exchange land and agreeing on land values.

e. Proposing to establish a process for developing, adopting, and revising land and resource management plans.

f. Proposing to establish a generic definition and description of old-growth forests on national forest lands.

3. *Proposals to perform routine repair and maintenance activities which have little potential for soil movement, loss of soil productivity, water quality degradation, or impact on sensitive resources values.*

Examples include but are not limited to:

a. Mowing vegetation along a National Forest System road.

b. Reroofing and painting a building.

c. Pruning vegetation and cleaning culverts along a trail and grooming the surface of the trail.

d. Grading a road and clearing the roadsides of brush without the use of herbicides.

e. Resurfacing an existing road.

f. Posting land line boundary signs.

4. *Proposals to acquire land or interest in land involving only transfer of title to the United States which include purchase, donation, tripartite land-for-timber exchanges, or acquisition of replacement land in Sisk Act cases.*

Examples include but are not limited to:

a. Donation of lands or interest in land to the National Forest System.

b. Purchase of a conservation easement or other interests in lands.

5. *Proposals to issue, reissue, or adjust a land use authorization which are consistent with an existing Forest Land and Resource Management Plan where the proposed activity or continuation of the activity will have little potential for soil movement, loss of soil productivity, water and air quality degradation, or impact on sensitive resource values.*

Examples include but are not limited to:

a. Issuing, reissuing, or adjusting an outfitter and guide permit.

b. Renewing a special use authorization to operate a communication site.

c. Renewing a special use permit to operate and maintain a domestic waterline and spring box.

d. Issuing a road use permit to haul commodities over National Forest System roads.

e. Issuing a road maintenance agreement authorizing a use to perform grading, culvert cleaning, and resurfacing operations on an existing Forest Service road.

f. Issuing a grazing permit where the existing AMP is consistent with the Forest Land and Resource Plan.

6. *Proposals to carry out small-scale pest management activities that have little adverse impact on non-target species, soil productivity, water quality or sensitive resources.*

Examples include but are not limited to:

a. Applying registered herbicides to control poison ivy on infested sites in a campground.

b. Applying biological agents on freshly cut stumps to prevent annosus root-rot.

c. Applying registered incesticides by compressed air sprayer to control insects at a recreation site complex.

d. Removing small infestations of noxious weeds by hand grubbing and pulling.

31.2—Categories of Actions for Which a Project or Case File and Decision Memo Are Required.

Maintain a project or case file and prepare a decision memo on the following categories of proposed actions. As a minimum, the file should include any records prepared, such as: (1) A list of the names of interested and affected people, groups, and agencies contacted during scoping; (2) the determination that no extraordinary circumstances exist; (3) a copy of the decision memo (sec. 30.5(2); (4) a list of the people notified of the decision, (5) a copy of the legal notice required by 36 CFR Part 217 and any other notice used to inform interested and affected persons of the decision to proceed with or to implement an action that has been categorically excluded. A proposed action that falls within any of the following categories and does not involve any extraordinary circumstances may be excluded from documentation in an EIS or EA; however, the decision to proceed must be documented in a decision memo (sec. 32).

1. *Proposals or issuance of authorizations to construct, reconstruct, or upgrade trails and low-standard roads (service level D as defined in FSH 7709.56) where the activity will have little potential for soil movement, loss of soil productivity, water and air degradation or impact on sensitive resource values.*

Examples include but are not limited to:

a. Constructing or upgrading a trail to a scenic overlook.

b. Reconstruct a low-standard road (service level D as defined in FSH 7709.56) in a previously roaded area with gentle slopes, non-erosive soils, and no sensitive resource values.

2. *Proposals or issuance of authorizations to construct, reconstruct, or upgrade facilities or utilities on approved sites that have little potential for soil movement, loss of soil productivity, water and air quality degradation, or impact on sensitive resource values.*

Examples include but not limited to:

a. Improve a water system in an existing Forest Service campground or administrative site.

b. Issuing a special use authorization permitting the construction of an additional telephone or utility line in an approved right-of-way corridor.

3. *Proposals to carry out fish and wildlife habitat management activities where there is little potential for displacement of exposed soil, changes in vegetation species composition, or new sources of water pollution.*

Examples include but are not limited to:

a. Installing a fish ladder on an existing dam.

b. Using explosive charges to remove the tops of a number of widely spaced trees to create snags for cavity nesting birds.

4. *Proposals to transfer lands or interests in land where loss of Federal jurisdiction will have little potential for soil, water and air quality degradation or impact on sensitive resources.*

Examples include but not limited to:

a. Selling or exchanging land pursuant to the Small Tracts Act.

b. Exchanging National Forest System lands or interests with a State agency, local government, or other non-Federal party (individual or organization), with similar resource management objectives and practices.

c. Exchanges of lands or interest in lands with similar resource values and characteristics.

d. Exchanges of administrative sites involving other than National Forest resource lands.

5. *Proposals to conduct research activities and administrative studies which do not involve genetically engineered organisms and which have little potential for soil movement, loss of soil productivity, water and air quality degradation or impact on sensitive resources.*

Examples include but are not limited to:

a. Conducting a field experiment on a previously logged area to determine the effects of several methods of site preparation on tree seedling survival and early growth.

b. Conducting an administrative study to evaluate the effectiveness of different fire retardants in reducing the rate of spread of fires burning under controlled conditions.

c. Conducting a field experiment to determine the effectiveness of aerial application of gypsy moth virus in preventing defoliation.

6. *Proposals to harvest or salvage timber which remove one million board feet or less of merchantable wood products; require one mile or less of new road construction; assure regeneration of harvested or salvaged areas, where required; and are consistent with Forest land and resource management plans. Activities have little potential for soil movement, loss of soil productivity, water and air quality degradation or impact on sensitive resource values.*

Examples include but are not limited to:

a. Harvesting (FSM 2470.1 and 2470.2) 600,000 board feet of merchantable timber from 100 acres, including the construction of one-half mile of additional roads from an area that has moderately steep slopes, stable but somewhat erosive soils, no sensitive resource values, and where soil type and moisture conditions are favorable for prompt regeneration.

b. Salvaging (FSM 2470.3) an estimated volume of 975,000 board feet of merchantable timber from dead or dying trees, including the construction of one mile of access road, from an area that is generally flat with good drainage and no sensitive resource values.

7. *Proposals to thin merchantable timber from over-stocked stands which require one mile or less of new road construction and are consistent with Forest lands and resource management plans. Activities have little potential for soil movement, water and air quality degradation, or impact on sensitive resource values.*

Examples include but are not limited to:

a. Thinning (FSM 2476.4) an estimated 850,000 board feet of merchantable timber from over-stocked timber stands, including the construction of one-quarter mile of additional access road, from an area that has moderate slopes, stable but somewhat erosive soils.

8. *Proposals to artificially regenerate areas to native treee species, including needed site preparation not involving the use of herbicides, which have little potential for soil movement, loss of soil productivity, water and air quality degradation, or impact on sensitive resource values and are consistent with Forest land and resource management plans.*

Examples include but are not limited to:

a. Planting seedlings of superior trees in a progeny test site to evaluate genetic worth.

b. Planting trees or mechanical seed dispersal of adapted tree species following a fire, flood, or landslide.

9. *Proposals to improve vegetation or timber conditions using approved silvicultural or habitat management techniques, not including the use of herbicides, which have little potential*

for soil movement, loss of soil productivity, water and air quality degradation or impact on sensitive resource values and are consistent with Forest land and resource management plans.

Examples include but are not limited to:

a. Performing precommercial thinning or brush control, not involving the use of herbicides, including the opening of an existing road to a dense timber stand on a site with steep slopes, moderately unstable and erodible soils, and no sensitive resource values.

b. Girdling to kill less desirable species.

c. Conducting a prescribed burn to control understory hardwoods in stands of southern pines.

d. Conducting a prescribed burn to reduce natural fuel build-up and improve plant vigor for forage species.

10. *Proposals to approve mineral and energy activities where there is little potential for soil movement, loss of soil productivity, water and air quality degradation or impacts to sensitive resource values.*

Examples include but are not limited to:

a. Approving a plan of operations which authorizes the repair of an existing road and/or the construction of temporary roads; the clearing of vegetation from a small area with moderate slopes, stable and non-erosive soils for trenches, drill pads or support facilities; and drilling of several core holes in the area to determine the extent of a mineral deposit.

b. Issuing a permit for geophysical operations which authorized the use and repair of existing roads and/or construction of temporary roads.

c. Authorizing the disposal of mineral materials through permit or sale from an existing community pit or common-use area.

d. Consent to the Bureau of Land Management to issue leases on producing wells when mineral rights revert to the United States from private ownership.

11. *Proposals to reissue a grazing permit which newly incorporates forest plan management direction which have little potential for soil movement, loss of soil productivity, water quality degradation, or impact on sensitive resource values.*

Examples include but are not limited to:

a. Issuance of a grazing permit to a new permittee as a result of the purchase of permitted livestock or base property and waiver of the outstanding permit to the United States in favor of the purchaser.

b. Re-issuance of a term grazing permit as a result of permit expiration.

12. *Proposals to modify a grazing management activity where no adequate allotment management plan is in effect and the proposed activity will have little potential for soil movement, loss of soil productivity, water quality degradation or impact on sensitive resource values.*

Examples include but are not limited to:

a. Reconstruct a fence to improve animal distribution.

b. Adding a stock watering facility to an existing water line.

c. Spot seeding native species of grass or applying lime to maintain rangeland condition.

13. *Proposals to issue or reissue a term permit for the continuing operation of existing facilities that have little potential for soil movement, water and air quality degradation, or impact on sensitive resource values and are consistent with the existing Forest Land and Resource Management Plan.*

Examples include but are not limited to:

a. Proposals to issue or reissue a term permit for a resort or marina as long as the permit does not provide for construction of new facilities.

b. Proposals to issue or reissue a term permit for an organizational camp as long as the permit does not provide for construction of new facilities.

14. *Amendments to Forest Land and Resource Management Plans which do not change decisions made in Forest Plans.*

Examples include but are not limited to:

a. Minor management area boundary changes.

b. Text changes made to management direction for clarification or updating of information.

c. Changes resulting from budget adjustments which do not affect the range of outputs identified in the Forest plan.

d. Additions or deletions to Forest plan schedules that do not change the objectives of the Plan (36 CFR 219.3).

e. Establishing management direction for research natural areas subsequent to designation.

32 Documentation of Decisions

32.1 Decision Memo Not Required

If a proposed action has been categorically excluded from documentation in an environmental impact statement or an environmental assessment under USDA categories (7 CFR 1b.3(a)) or the categories listed in section 31.1b, a Decision Memo is not required; however, interested and affected persons must be informed in an appropriate manner of the decision to proceed with the proposed action (sec. 11.5).

32.2 Decision Memo Required

If the proposed action has been categorically excluded from documentation in an environmental impact statement or environmental assessment under the categories listed in section 31.2, document the decision to proceed with the proposed action in a decision memo. Section 32.3 sets forth the format and content of a decision memo.

When the Chief or Secretary is the responsible official, the appropriate field unit prepares the decision memo with assistance from the Washington Office (WO) Environmental Coordination Staff. The WO Environmental Coordination Staff coordinates the review and signing of the decision memo, involving the appropriate WO staff(s), Deputy Chief, Chief, or Secretary, as necessary. The signed original will be filed in WO Environmental Coordination Staff office files. The WO Environmental Coordination Staff will forward a copy to the appropriate field unit or WO staff for necessary distribution.

32.3 Format and Content of a Decision Memo

The format of a decision memo is not intended to replicate the format of a correspondence memorandum (FSH 6209.17). Generally, decision memos should conform to the following format and content although sections may be combined or rearranged in the interest of clarity and brevity.

1. *Heading.* The heading will identify:

(a) Agency.

(b) The title of the proposed action.

(c) The location of the proposed action (including administrative unit, county, and state). If appropriate, include the legal land description.

2. *Decision.* Describe the decision to be implemented and the reasons for categorically excluding the proposal. Include (a) the category (7 CFR 1b.(3) and sec. 31 into which the proposed action falls (b) a finding that no extraordinary circumstances exist (sec. 30.3, 1.c).

3. *Public Involvement.* List any interested and affected agencies, organizations, and persons contacted.

4. *Findings required by other laws.* Include any findings required by any other laws. For example, findings of consistency with the Forest Land and Resource Management Plan as required by the National Forest Management Act (FSM 1922.41 and FSH 1909.12, sec. 31.1b(5); or a public interest

determination (36 CFR 254.3(c) and FSM 5430.3).

5. *Implementation date.* Include the date when the responsible official intends to implement the decision (sec. 51), and identify any conditions related to implementation.

6. *Administrative review or appeal opportunities.* State whether the decision is subject to review or appeal, cite the applicable regulations, and identify when and where to file a request for review or appeal.

7. *Contact Person.* Include the name, address, and phone number of a contact person who can supply further information about the decision.

8. *Signature and Date.* The responsible official must sign and date the decision memo on the date the decision is made.

33 Notice and Distribution of Decision Memo

Distribute a decision memo as soon as it is signed to agencies, organizations, and persons interested in or affected by the proposed action.

1. The responsible official shall promptly mail the decision memo to those who requested it.

2. As a minimum, for a decision subject to appeal under 36 CFR part 217, in addition to the notice required by paragraph 1, the responsible official shall publish a notice of the availability of the decision memo and a summary of the decision as required by 36 CFR part 217. The responsible official may elect to publish the complete text of the decision memo.

3. The responsible official may provide other forms of notice appropriate to the importance of the decision.

4. The responsible official shall enter the date of the decision memo on the Calendar of Proposed Actions in the "Status/Comments" column. (Sec. 07)

5. When required by E.O. 12372, send copies to the State Single Point of Contact or, in cases where a State has elected not to establish a Single Point of Contact, the State official(s) involved.

Chapter 40—Environmental Assessments and Related Documents

Contents

41 Environmental Assessments

Prepare environmental assessments to document the results of environmental analyses and to disclose the environmental consequences for proposed actions that are not categorically excluded from documentation and for which the need for an environmental impact statement has not been determined.

The CEQ Regulations provide that an environmental assessment is not necessary if the agency has decided to prepare an environmental impact statement (40 CFR 1501.3(a)). Therefore, if prior to completion of the environmental assessment the responsible official determines an environmental impact statement should be prepared, discontinue the environmental assessment documentation, prepare a notice of intent (sec. 21), and proceed with the preparation of an environmental impact statement (ch. 20).

41.1 Purpose of Environmental Assessments

The purpose of an environmental assessment is to:

(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

(2) Aid an agency's compliance with the Act when no environmental impact statement is necessary.

(3) Facilitate preparation of a statement when one is necessary. (40 CFR 1508.9)(a))

41.2 Content

An environmental assessment may be prepared in any format useful to facilitate planning, decisionmaking, and public disclosure as long as the requirements of this chapter are met. The length and detail of an environmental assessment may vary according to the complexity of the issues involved in the analysis. An environmental assessment:

(b) Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted. (40 CFR 1508.9(b))

42 Other Considerations in Preparing Environmental Assessments

42.1 Tiering

Tier environmental assessments to other environmental documents of broader scope to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision. See sections 05, 22.31, and 25.1 for additional information about tiering.

42.2 Adoption

Adopt other agency existing environmental assessments or portions thereof to eliminate duplication and reduce excessive paperwork if the document meets Forest Service standards and requirements. Section 25.2 contains additional guidance on adoption.

42.3 Incorporation by Reference

Incorporate material into environmental assessments by reference when the result will be to cut down on bulk without impeding agency and public review of the proposed action and alternatives. Include a brief summary of the material being incorporated by reference. Consult Section 22.33 for additional guidance on incorporation by reference.

43 Documentation of Decisions

43.1 Finding of No Significant Impact (FONSI)

When an environmental assessment has been prepared, the responsible official shall review the document and determine whether the proposed action may have a significant effect on the quality of the human environment. The CEQ Regulations define a finding of no significant impact (FONSI) as:

> . . . a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (§ 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (§ 1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference. (40 CFR 1508.13)

If the responsible official determines that the proposed action may have a significant effect on the quality of the human environment, publish a notice of intent to prepare an environmental impact statement (ch. 20) in the **Federal Register**. Otherwise, prepare FONSI. A FONSI may be a separate document or included as part of a decision notice (sec. 43.2).

Use the criteria in the definition for "significantly," section 05, for determining whether the action will have a significant effect on the human environment.

43.2 Decision Notice

If an environmental assessment and a FONSI have been prepared, document the decision to proceed with an action or activity in a decision notice. The responsible official shall read and concur in the environmental assessment and finding of no significant impact prior to signing a decision notice.

A FONSI may be a separate document or combined with a decision notice.

If a FONSI cannot be prepared because the proposed action may have a significant effect on the environment, a decision notice is not required. If this is the case, prepare and issue a notice of intent to prepare an environmental impact statement. Note the status of the environmental analysis on the calendar of proposed actions (sec. 07).

When the Chief or Secretary is the responsible official, the appropriate field unit or Washington Office (WO) staff(s) prepares the decision notice with assistance from the WO Environmental Coordination Staff. The WO Environmental Coordination Staff coordinates the review and signing of the decision notice, involving the appropriate WO staff(s), Deputy Chief, Chief, or Secretary, as necessary. The signed original will be retained in WO Environmental Coordination.

The WO Environmental Coordination Staff will forward a copy to the appropriate field unit or WO staff for necessary distribution.

43.21 Format and Contents

Decision notices should reflect the conclusions drawn and the decision(s) made from the analysis documented in the environmental assessment. Generally, they should conform to the following format and content suggestions. Sections may be combined or rearranged in the interest of clarity and brevity.

1. *Heading.* The heading will identify:

(a) Agency.

(b) The title of the proposed action.

(c) The location of the proposed action, including administrative unit, county, State. In some cases, it may be appropriate to include the legal land description.

2. *Decision and Reasons for the Decision.* The selected alternative and the nature of the decision are described. In addition, this section identifies:

(a) Applicable laws, regulations, and policies.

(b) How issues were considered.

(c) Factors other than environmental effects considered in making the decision.

(d) Identification of environmental document(s) read and considered in making the decision.

(e) How (a)–(d) were weighed and balanced in arriving at the decision.

3. *Alternatives considered.* All alternatives considered, including the no-action alternative, should be briefly discussed with specific references to relevant information in the environmental assessment.

Relevant mitigation measures, management requirements, and monitoring provisions should be discussed with specific citations to pages of the environmental assessment.

4. *Public involvement.* Provide a brief summary of how the public was involved in the analysis.

Persons or groups raising issues or asserting opposing viewpoints may be identified and their views discussed in light of the decision.

5. *Finding of no significant impact (FONSI).* The decision notice will either contain or refer to a finding of no significant impact (section 41.3). The FONSI will identify the reasons why an action will not have a significant effect on the quality of the human environment giving consideration to the criteria for determining significance set forth in section 05. (40 CFR 1508.27)

6. *Findings required by other laws and regulations.* Include any findings required by any other laws which apply to the decision being made. For example, findings regarding consistency with the forest plan, suitability for timber production, and vegetation management criteria required by the National Forest Management Act (FSM 1922.41 and FSH 1909.12 sec. 05.3).

7. *Implementation date.* Identify the date when the responsible official intends to implement the decision (sec. 51).

8. *Administrative review or appeal opportunities.* State whether the decision is subject to administrative review or appeal, cite the applicable regulations, and indicate when and where to file a request for review or appeal.

9. *Contact person.* Identify the name, address, and phone number of a contact person who can supply additional information.

10. *Signature and Date.* The responsible official must sign and date the decision notice on the date the decision is made.

44 Notice and Distribution of FONSI and Decision Notice

Distribute environmental assessments, decision notices, and FONSIs to agencies, organizations, and persons interested in or affected by the proposed action.

When unusual circumstances are involved, the responsible official may want to issue a FONSI and decision notice separately. The FONSI will be issued first. In these cases, the CEQ Regulations provide that:

> . . . the agency shall make the finding of no significant impact available for public review (including State and areawide clearinghouses) for 30 days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin. The circumstances are:
>
> (i) The proposed action is, or is closely similar to, one which normally requires the preparation of an environmental impact statement under the procedures adopted by the agency pursuant to 1507.3, or
>
> (ii) The nature of the proposed action is one without precedent. (40 CFR 1501.4(e)(2))

1. The responsible official shall promptly mail the FONSI and decision notice to those who, in writing, have requested it, and to those who are known to have participated in the decisionmaking process.

2. As a minimum, for decisions subject to appeal under 36 CFR part 217, in addition to the notice required by paragraph 1, the responsible official shall promptly publish a notice of the availability of the decision notice in the legal section of a newspaper(s) of record as required by 36 CFR part 217. The responsible official may elect to publish a summary of the decision or the complete text of the decision notice.

3. The responsible official may provide other forms of notice appropriate to the nature and scope of the decision.

4. The responsible official shall enter the date of the FONSI and the decision notice on the calendar of proposed actions in the "status" column (sec. 07).

5. When required by E.O. 12372, send copies to the State Single Point of Contact or, in cases where a State has elected not to establish a Single Point of Contact, the State official(s) involved.

Chapter 50—Implementation and Monitoring

Contents

51 Implementing Decisions Based on Environmental Impact Statements

A decision documented in a record of decision can be implemented no sooner than 30 days following the date the Environmental Protection Agency publishes the Notice of Availability of the related final environmental impact statement in the **Federal Register** (40 CFR 1506.10).

Commitments for mitigation efforts or monitoring activities included in the final EIS and record of decision must be met.

In addition, if an environmental impact statement allocates an inventoried roadless area or a RARE II "further planning" area(s) to nonwilderness uses, do not implement any activity that would alter the roadless character of the area(s) until a letter is received from the Washington Office Environmental Coordination Staff indicating implementation may take place. (sec. 24.3)

52 Implementing Decisions Based on Environmental Assessments

52.1 Limitations on Implementation

When a proposed action is similar to one that normally requires an environmental impact statement or when the nature of a proposed action is without precedent, do not implement the decision until after the decision notice and a finding of no significant impact have been available for public review for 30 days (40 CFR 1501.4(e)(2)). In addition, as required by E.O. 12372, send copies to the State Single Point of Contact or, in cases where a State has elected not to establish a Single Point of Contact, to the State official(s) involved.

At the end of the 30-day period, consider public comment and implement the decision, or publish a notice of intent to prepare an EIS.

52.11 Actions Involving Flood Plains and Wetlands

For actions involving flood plains and wetlands, do not implement decisions until 30 days after the decision notice has been signed and dated. This delay allows a reasonable period of public review as required by Executive Order 11988, as amended, and Executive Order 11990.

53 Monitoring

Agencies may provide for monitoring to assure that their decisions are carried out and should do so in important cases. Mitigation (1505.2(c)) and other conditions established in the environmental impact statement or during its review and committed as part of the decision shall be implemented by the lead agency or other appropriate consenting agency. The lead agency shall:

(a) Include appropriate conditions in grants, permits or other approvals.

(b) Condition funding of actions on mitigation.

(c) Upon request, inform cooperating or commenting agencies on progress in carrying out mitigation measures which they have proposed and which were adopted by the agency making the decision.

(d) Upon request, make available to the public the results of relevant monitoring. (40 CFR 1505.3)

In addition to complying with the monitoring requirements of an existing Forest Land and Resource Management Plan (FSH 1909.12, Ch. 6), monitor actions to ensure that:

1. Mitigation measures and terms and conditions of permits or other land use authorizations are met.

2. Anticipated results are achieved.

3. Necessary adjustments are made to achieve desired results.

Chapter 60—References

Contents

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federal register

Monday
April 29, 1991

Part III

Department of the Interior

Office of the Secretary

43 CFR Part 11

Natural Resource Damage Assessments; Notice of Proposed Rulemaking

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 11

RIN 1090-AA22

Natural Resource Damage Assessments

AGENCY: Department of the Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of the Interior (the Department) is proposing revisions to the natural resource damage assessment rule, codified at 43 CFR part 11, to conform with a court ruling. In that ruling, the court held that: (1) Restoration costs are the preferred measure of natural resource damages under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601, *et seq.*; and (2) all reliably calculated lost use values of injured natural resources should also be recoverable, with no specific hierarchy of methodologies required of natural resource trustees in conducting those valuations. The court also requested clarification as to the extent to which privately owned natural resources might be subject to the natural resource damage assessment rule.

The natural resource damage assessment rule was developed pursuant to section 301(c) of CERCLA. The Department promulgated two types of assessment rules: Standard procedures for simplified assessments requiring minimal field observation (type A procedures); and site-specific procedures for detailed assessments in individual cases (type B procedures). The type A rule and the type B rule were challenged in two separate, but parallel, cases. The Department is now seeking comments on proposed revisions to the type B rule to comply with the court's decision. These proposed revisions will ensure that the type B rule carries out the purpose and requirement of CERCLA for the recovery of damages to be used for the restoration, rehabilitation, replacement, and/or acquisition of the equivalent of injured natural resources as full compensation for the injured resources. Today's proposed rulemaking provides for a unified process for trustees to develop claims for both the costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and reliably calculated lost values of the injured resources, with no required hierarchy of valuation methodologies for determining those values.

This notice deals solely with issues relating to those provisions of the type B rule remanded by the court for revision or clarification. The statutorily-required two-year review of the type B rule is scheduled to begin when today's proposed rule is published as a final rulemaking. That review will provide an opportunity to address issues beyond those addressed in today's Notice. The Department's proposed revisions to the existing type A rule for coastal and marine environments and comparable modifications to the ongoing development of a new type A rule for the Great Lakes environments will be published separately at future dates.

The date upon which the court-ordered revisions for both type A and type B, whichever is later, become effective as a final rule is the date on which "regulations are promulgated" for the purposes of determining the period in which actions may be brought for natural resource damages.

DATES: Comments will be accepted through June 28, 1991.

ADDRESSES: Office of Environmental Affairs, ATTN: *NRDA Rule*, room 2340, Department of the Interior, 1849 C Street, NW., Washington, DC 20240 (regular business hours 7:45 a.m. to 4:15 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Cecil Hoffmann or David Rosenberger at (202) 208-3301.

SUPPLEMENTARY INFORMATION:

This preamble is organized as follows:

I. Background

A. Statutory Background

Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601, *et seq.*, authorizes natural resource trustees to recover compensatory damages for injury to natural resources, as well as the reasonable costs of assessing such injury and any prejudgment interest. The damages that may be sought by natural resource trustees are for the injury to, destruction of, or loss of natural resources resulting from a discharge of oil or a release of a hazardous substance. Natural resource damages are in addition to cost-recovery for response actions. Federal and State natural resource trustees may bring an action for damages under sections 107(f) and 113(g) of CERCLA, 42 U.S.C. 9607(f) and 9613(g), and sections 311(f) (4) and (5) of the Clean Water Act (CWA), 33 U.S.C. 1321(f) (4) and (5) (also known as the Federal Water Pollution Control Act). Indian tribes may commence an action as natural resource trustees under sections 107(f) and 126(d) of CERCLA, 42 U.S.C. 9607(f) and 9626(d). Section 107(f) requires that all sums recovered as damages must be used only to restore, replace, or acquire the equivalent of such natural resources. Section 107(f) also provides that assessments performed by Federal and State natural resource trustees in accordance with the rule receive the evidentiary status of the rebuttable presumption.

Section 301(c) of CERCLA, 42 U.S.C. 9651(c), requires the promulgation of regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a discharge of oil or a release of a hazardous substance. Section 301(c) calls for the natural resource damage assessment regulations in the following terms:

> (2) Such regulations shall specify (A) standard procedures for simplified assessments requiring minimal field observation, including establishing measures of damages based on units of discharge or release or units of affected area, and (B) alternative protocols for conducting assessments in individual cases to determine the type and extent of short- and long-term injury, destruction, or loss. Such regulations shall identify the best available procedures to determine such damages, including both direct and indirect injury, destruction, or loss and shall take into consideration factors including, but not limited to, replacement value, use value, and ability of the ecosystem or resource to recover.

The promulgation of these regulations was delegated to the Department of the Interior by Executive Order 12580, 52 FR 2923 (January 23, 1987).

The Oil Pollution Act of 1990 (Pub. L. 101–380) was signed into law on August 18, 1990. It makes provision for natural resource damage assessment rules for discharges of oil in navigable waters to be developed by the Under Secretary of Commerce for Oceans and Atmosphere, particularly the National Oceanic and Atmospheric Administration (NOAA), in consultation with, among others, the Fish and Wildlife Service of the Department of the Interior. This Department will make itself available to work with NOAA to ensure the coordination of the parallel processes for damage assessments whether they result from releases of hazardous substances or discharges of oil. Section 6001(b) of the Oil Pollution Act of 1990 provides that any rule in effect under a law replaced by the Act will continue in effect until superseded. In particular, Senate committee report language makes it clear that "[t]he existing Interior Department rules, as amended by the court's decisions, may be used with a rebuttable presumption in the interim" until the new regulations are promulgated by Commerce. S. Rep. No 101–94, 101st Cong, 1st Sess. 15 (1990).

CERCLA mandates biennial review and revision, as appropriate, of the Department of the Interior's damage assessment rule. The revisions are to be based on, among other things, new information or experience in applying the existing rule. The Department proposes to begin its planning of the next biennial update of the type B rule as soon as possible, coordinating input to the greatest extent possible with NOAA. The target date for an advance notice of proposed rulemaking soliciting input for that review process is in June 1991. The first biennial review of the type B rule produced only four comments. Those comments essentially reflected issues that the court was deliberating at the time. However, many comments and suggestions from users or potential users of the rule have been heard by Department staff over the years since the rule has been in use.

One excellent source of such comments has been the State briefing workshops which are scheduled by Interior at the request of individual States, and which have been held since the rule was published late in 1986. These workshops are generally attended by personnel from States' trustee agencies and attorney general offices, response agencies, and field personnel from a variety of Federal agencies with either trustee or response concerns in the region. Another source of insight on use of the rule is the stream of calls received by Interior staff day-to-day from trustee officials in the field requesting technical assistance as they apply the rule in their individual situations.

The court decision was handed down in July 1989. At that time, the Department considered whether to begin the next biennial review and combine the revisions mandated by the court with those derived from user experience to that date. However, the court expressly mandated expeditious revision. The issues raised by various users did not present easy solutions. Some suggestions offered for addressing issues are diametrically opposed to each other. Thus, the Department decided that the current revisions should just implement the court decision, and that revisions based on experience should await further analysis, consultation with relevant agencies, and public input.

Revising the rule to accommodate known concerns will require considerable analysis and involvement of other governmental agencies and the public. The Department has begun planning for the next biennial revision of the rule mindful of these concerns. Also, as a result of the new provisions of the Oil Pollution Act of 1990, this Department will be coordinating its biennial review efforts with NOAA, since the Under Secretary of Commerce for Oceans and the Atmosphere was designated to write the natural resource damage assessment rules implementing that new Act.

For the information of readers looking forward to the biennial review of the Interior rule, the following are highlights of issues heard to date: The general overall concern about the rule heard most often over time is that it is "too complicated" or "too wordy," and that it should be written in simpler language, "in plain English," with fewer "shalls." There should be an expedited process for (oil) spills. There should be more guidance on pre-assessment coordination. There should be more guidance on post-assessment activities. There should be provisions for starting restoration activities while the damage assessment is still under way (while not precluded, it is not expressly discussed). The standards for injury determination should be relaxed. The standards for injury determination should be more explicit.

One issue heard throughout the Exxon Valdez experience to date has been the lack of public knowledge of both the immediate effects of the spill in the region and the potential long range effects on the environments affected by the spill. Some members of the public have expressed frustration at the apparent lack of opportunity for those with varied concerns to provide their input to decisionmaking on many aspects of the aftermath of the spill. These are concerns about all aspects of the incident, but some of them center on the natural resource damage assessment process and the potential for restoration of injured resources, and, therefore, they are concerns with any future application of the Department's rule. Some comments heard following the Exxon Valdez incident stressed the need for early public involvement, both in the damage assessment process and in restoration planning, that restoration planning must be a cooperative effort involving the public. A suggestion was made that there be more guidance to trustees on making their restoration decisions, putting the emphasis first on rehabilitation, then on replacement, and finally on acquisition, in effect establishing restoration planning priorities that give the highest priority to rehabilitation. A suggestion was made that socioeconomic effects of restoration alternatives might be added to the list of factors that trustees are to consider in making their selection among restoration alternatives. Another issue is the access of the scientific community and the public to scientific and technical data contributing to damage assessment when that data was gathered for, or might be useful in, litigation of damage claims at a future date.

As soon as the current revisions are completed, the Department will publish an advance notice of proposed rulemaking to request general comments on experience to date, and also to request specific comments on issues, such as those highlighted above. The target date for that advance notice is 1991 June.

Meanwhile, the Department is proceeding with revisions of the type A rule in accordance with the court decision: the existing Natural Resource Damage Assessment Model for Coastal and Marine Environments (NRDAM/CME), and the model under development for Great Lakes Environment (NRDAM/GLE). For efficiency, changes were made first on the work in progress, NRDAM/GLE. A proposed rule for the Great Lakes environment is targeted for May 1991. The contract to amend the existing NRDAM/CME model was advertised in July of 1990, with a target for proposed rulemaking in December of 1991.

B. Regulatory History

The Department, pursuant to its delegated responsibilities under CERCLA, has promulgated various final rules for the assessment of damages for injuries to natural resources in the following rulemakings: (1) August 1, 1986 (51 FR 27674), "type B" procedures, the general process for conducting natural resource damage assessments, and the alternative methodologies for conducting assessments in individual cases; (2) March 20, 1987 (52 FR 9042), "type A" procedures, the standard procedure for simplified assessments in coastal and marine environments, using a computer model called the Natural Resource Damage Assessment Model for Coastal and Marine Environments (NRDAM/CME); (3) February 22, 1988 (53 FR 5166), to amend 43 CFR part 11 to conform with amendments to CERCLA; and (4) March 25, 1988 (53 FR 9769), technical corrections to the NRDAM/CME. This combination of rulemakings, codified at 43 CFR part 11, is the natural resource damage assessment rule called for by section 301(c) of CERCLA.

The major impact of today's proposal would be in the damage determination phase. Therefore, reviewers should keep in mind the context of the entire natural resource damage assessment rule when considering the proposed revision. Reviewers may wish to refer to the type B rule (43 CFR part 11) in preparation of the comments on today's proposal.

Existing Assessment Process: The natural resource damage assessment rule provides an administrative process for conducting natural resource damage assessments with four major components. The first component of this process, the preassessment activities, includes several steps to take before initiating an assessment. All natural resource damage assessments contain these same initial steps. These steps generally begin with the notification of or detection by the natural resource trustee of a discharge or release. The trustee performs a preassessment screen to determine that a CERCLA or CWA-covered incident has occurred and that resources of the trustee may have been affected. The trustee makes a determination upon completion of the preassessment screen as to the appropriateness of further assessment actions. Provisions are made for emergency restoration as authorized by section 111(i) of CERCLA.

The second component calls for the preparation of an Assessment Plan before initiating an assessment using either the type A or type B procedures. The level of detail contained in the Assessment Plan should be consistent with the rule's requirement for reasonable cost. The trustee must also comply with the rule's requirements for coordination with co-trustees, identification and involvement of the potentially responsible party, and public involvement in the development of the Assessment Plan. Also, the trustee must decide whether to conduct a type A or type B assessment. The trustee documents all decisions on the selection of both the scientific and economic methodologies to be used in the assessment in the Assessment Plan. The Assessment Plan must ensure that only the reasonable costs of assessment will be incurred. The trustee must provide for public involvement in the Assessment Plan with at least a 30-day review and comment period before implementing the Plan or making significant modifications. Comments received during this review, as well as responses to these comments, will be maintained as part of the administrative record of the assessment.

In the third component, the trustee begins either the type A or type B assessment. Both the type A and type B procedures follow the same three steps. Each type of assessment requires an Injury Determination phase, a Quantification phase, and a Damage Determination phase. The discussion that follows relates to a type B assessment.

During the Injury Determination phase, the assessment focuses on determining that an injury to the resource has occurred and that the injury has resulted from the discharge or release. After injury has been confirmed in this phase, the assessment moves into the Quantification phase. The focus of the Quantification phase is on identifying the services, such as habitat, recreation, or erosion control, provided by the resource, determining the baseline level of such services that existed before the discharge or release, and quantifying the reduction in services resulting from the discharge or release. The Quantification phase is closely related to the third phase of the type B assessment, the Damage Determination phase. The Damage Determination phase focuses on calculating the monetary compensation to be sought as damages for the injury to the natural resources. The calculations are based on the information derived from the Quantification phase as to the extent of the injury sustained and the effects on the services provided by the resource.

At the end of every natural resource damage assessment, whether a type A or a type B procedure is followed, the fourth component consists of several post-assessment requirements. These requirements include a Report of Assessment to act as the administrative record of the assessment, the establishment of an account for damage assessment awards, and the development of a Restoration Plan to ensure that all damage assessment awards are used for the restoration, rehabilitation, replacement, and/or acquisition of the equivalent of the injured resources.

This overall administrative process for conducting a natural resource damage assessment pursuant to the Department's rule would remain basically unchanged by today's proposed revision. There would still be the four phases, or components, in the assessment process: the preassessment phase, the assessment plan phase, the assessment phase (where the trustee conducts a type A or type B assessment), and the post-assessment phase. Also, there would continue to be two planning components in a type B assessment: the Assessment Plan, and the Restoration and Compensation Determination Plan (formerly called the Restoration Methodology Plan), which is to be part of the Assessment Plan.

Points in the Process Unchanged: The majority of the issues considered by the court in its review of the type B rule were upheld as valid. Therefore, the rule would still require that assessment costs be "reasonable" when compared to the anticipated amount of damages to be recovered. The biological response acceptance criteria will remain as a method for identifying "actionable" injuries. The concept of valuing "committed" uses would remain when estimating compensable value and still serves to prevent speculative damages. The contingent valuation methodology still is a valid tool in a damage assessment. The requirement that trustees develop a restoration plan for use after the damage award still stands and will assist with the statutory intent that the trustee restore, rehabilitate, replace, and/or acquire resources equivalent to those injured by the discharge or release.

C. Judicial Review

Section 113 of CERCLA provides that any member of the public may petition the Court of Appeals for the District of Columbia Circuit to review any regulation promulgated under CERCLA. A number of parties filed such petitions for the court to review the natural resource damage assessment rule. The rule was challenged in two separate, but parallel, cases. In *State of Ohio* v. *United States Department of the*

Interior, 880 F.2d 432 (D.C. Cir. 1989) (*Ohio* v. *Interior*), petitioners challenged a total of twelve issues that pertained to the administrative process and the type B procedures established in the rule. In *Colorado* v. *United States Department of the Interior*, 880 F.2d 481 (D.C. Cir. 1989), petitioners challenged two issues pertaining to the type A procedures.

The United States Court of Appeals for the District of Columbia Circuit unanimously upheld in part and invalidated in part certain aspects of the administrative process and the type B procedures. In that ruling, the court held that: (1) Restoration costs are the preferred measure of natural resource damages under CERCLA; and (2) all reliably calculated lost use values of injured natural resources should also be recoverable, with no specific hierarchy of methodologies required of natural resource trustees in conducting those valuations. The court also asked the Department to clarify its interpretation of extent to which the rule applies to natural resources that are privately owned.

Today's notice deals only with the three issues remanded to the Department in *Ohio* v. *Interior* affecting the administrative process and the type B procedures. The revisions to the type A procedures will be conducted under future, separate rulemakings.

1. Issues Remanded for Revision

Measure of damages. One issue decided by the court concerned the Department's type B rule requiring the trustee's basic measure of damages for natural resource injuries to be either restoration costs or lost use value of the resources, whichever was estimated to be the lesser amount. The court held that CERCLA indicates a distinct preference for using restoration costs as the measure of damages, although the court acknowledged the role of the Department in determining under what conditions the use of restoration costs as the measure of damages might not be appropriate.

The provisions for calculating restoration costs were set out in the type B rule since restoration costs were one of two possible measures of damages. The rule required the trustee to quantify the effects of the injury to the natural resources in terms of services lost or disrupted as a result of a discharge or release. The trustee then determined alternative management actions that would restore those lost or disrupted services in a cost-effective manner. In addition, the rule allowed the natural resource trustee to claim damages for loss or lessening of use values associated with the lost services over the time required to accomplish the restoration. Much of this present guidance would be retained.

Economic valuations. The other issue upon which the type B rule was remanded for revision was the Department's prescribed ranking, or hierarchy, of economic valuation methodologies for determining use values, and the associated limitation of those valuation methodologies for the recovery of nonuse values only to those situations where no direct uses could be found.

The type B rule provided a listing of economic valuation methodologies to calculate lost use values ranked as to their reliability. The court upheld the methodologies listed in the rule, but said that the rule could not require the use of one methodology over another.

The type B rule categorized various uses to be valued for an injured resource as "use" values and "option and existence" values, and allowed recovery for option and existence values only where the trustee could not apply a valuation methodology to determine a direct use value for a resource. The court held that while option and existence values represent passive use of a resource, they ought to be recoverable in a damage assessment.

2. Issue Remanded for Clarification

On one issue, the court upheld the rule, but asked the Department to clarify the scope of public ownership of natural resources covered by the rule. The preamble to the final type B rule suggested that natural resource damage assessments should not cover privately-owned natural resources. However, the court understood the Department's oral argument to suggest that a substantial degree of government regulation, management, or other form of control over privately-owned natural resources could be sufficient to make the natural resource damage provisions apply to such resources in certain circumstances. The court construed CERCLA to mean that, while purely private resources are excluded from the natural resource damage provisions, some resources not owned by the government are encompassed by CERCLA's natural resource damage provisions. The court's construction was based primarily on the definition of natural resources found in section 101(16) of CERCLA and its legislative history. The court invited the Department to clarify its interpretation of the degree of management, regulation, control, or property interest that might make natural resources subject to the natural resource damage assessment rule.

D. Advance Notice of Proposed Rulemaking

The Department published a Federal Register notice on September 22, 1989 (54 FR 39016), to announce the Department's intent to revise the type B rule to comply with the court's decisions. Responses were requested on the following kinds of questions to assist in carrying out that purpose: (1) What possible considerations might trigger the use of a measure of damages other than restoration costs; (2) should the rule provide criteria and, if so, what criteria might be used to determine whether restoration is "technically feasible;" (3) should the rule define the term "grossly disproportionate" and, if so, how; (4) how much guidance should the rule include and what would be possible selection criteria to make available to the trustee in selecting the most appropriate methodology to determine lost use values; (5) what systems were available for classifying resource uses, as to use and nonuse, etc., which would also aid the trustee to avoid double counting; and (6) what degree and type of management, regulation, control, or property interest might make natural resources subject to the provisions of CERCLA for the purposes of enabling public trustees to recover damages for injuries to such resources?

The Department received over 700 pages of comments from 32 submissions on the possible revisions to the type B rule. The discussion of those comments on the type B rule with the Department's response is found in Section IV. of this preamble.

II. Discussion

A. Introduction

The Department is proposing to revise the type B rule to comply fully with the court order. The court's ruling on the measure of damages centered around the "lesser of" requirement found in § 11.35 of the current type B rule. The rule required that the trustee conduct an assessment for the natural resource injury with the measure of damages being either an estimate of the restoration costs or the lost use value of the resources, whichever was estimated to be the lesser amount. The court held that CERCLA indicates a distinct preference for using restoration costs as the measure of damages for injured natural resources.

The second major issue ruled upon by the court on the type B rule was in the area of the economic valuation methodologies and the kinds of "uses" of the resources that could be valued using those methodologies. The rule

provided a listing of economic valuation methodologies, and listed these methodologies ranked in order of their reliability and accuracy. The rule required first considering the use of market price or appraisal methodologies, then, only if these were not appropriate, moving to other valuation methodologies down the list. In addition, the rule categorized the types of values that a resource might have as "use" or "nonuse" values. The rule allowed the trustee to recover "nonuse" values only when no direct uses could be identified.

The court said that the rule could not require the use of one methodology over another, but that the trustee should be allowed to use any reliable methodologies available. The court also said that, even though "nonuse" values might represent only "passive" or "non-consumptive" use of a resource, they should be recoverable in a damage assessment.

At a minimum, to comply with the court's decisions on these two issues, the Department could do three simple revisions: (1) remove the "lesser of" requirement of § 11.35; (2) delete the language of § 11.83 requiring the economic valuation hierarchy; and (3) delete the language of § 11.83 restricting recovery of nonuse values to those cases where the trustee can determine no direct uses of the injured resource. However, today's proposed revision would provide an approach, particularly affecting the Damage Determination phase of the rule, that provides greater assistance to trustees in planning and recovering for restoration activities. The proposed revision would provide guidance to help trustees recover compensation based on both estimating the costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and valuing the loss of services to the public. These two components of the measure of damages are presented together throughout the section describing these estimation and valuation activities to provide a comprehensive approach to assessing damages.

B. Restoration Costs as the Measure of Damages

The court held that CERCLA indicates a preference for using restoration costs as the measure of natural resource damages. However, the court also suggested that there might be circumstances when some factor other than restoration costs could be the measure of damages. The court used the simple term "restoration" costs. The law provides that sums recovered from natural resource damage claims must be used to restore, rehabilitate, replace, or acquire the equivalent of affected natural resources. The Department proposes to use the phrase "restoration, rehabilitation, replacement, and/or acquisition of equivalent" as encompassing the full range of possible "restoration" actions a trustee might plan to take and, therefore, use to estimate the costs of the selected "restoration" action. It is recognized that, in many cases, trustees will take some combination of these actions, rather than only one. Some portion of this broader list—restoration, rehabilitation, replacement, or acquisition of the equivalent—will always be a part of the trustee's "restoration" activities, because some trustee actions will always be required beyond the trustee's normal management actions. Thus, there will always be some cost attributable to "restoration" or what the proposed revision calls restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. On this basis, the Department does not propose to set out circumstances when some factor other than restoration costs should be the measure of damages as would have been allowable under the court's ruling.

The Department is proposing revisions to the Damage Determination phase to provide some additional guidance to the trustee in estimating site-specific costs of various possible alternatives to bring about the restoration, rehabilitation, replacement, and/or acquisition of the equivalent of the injured resources. The guidance discusses such factors as the trustee's consideration of the technical feasibility of the possible alternatives, and also consideration of whether the relationship of the estimated costs of an alternative are proportionate to the anticipated benefits gained from that action.

In addition to recovering the costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources, the trustee may also recover the value of the services lost to the public until the lost services are returned to baseline levels. The proposed revision of the Damage Determination phase would describe the values for which the public may be compensated, and the methodologies that may be used to estimate those values.

Therefore, the measure of damages under the proposed revision would be the estimated cost of the selected alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources, plus the compensable value of the services that will be lost to the public through the period of recovery to the baseline conditions existing before the discharge or release. The types of costs and the extent of compensable value that may be recovered are discussed together in the Damage Determination phase to ensure that the trustee simultaneously makes plans to recover both, as appropriate, for any given incident.

Restoration and Compensation Determination Plan: The proposed revision of the Damage Determination phase provides for the development of a Restoration and Compensation Determination Plan. This Restoration and Compensation Determination Plan would replace the Restoration Methodology Plan of the existing rule. In the Restoration and Compensation Determination Plan, the trustee will identify and consider a reasonable number of possible alternatives for the restoration, rehabilitation, replacement, and/or acquisition of resources equivalent to the injured resources. In the Restoration and Compensation Determination Plan, the trustee would also include an estimate of the services that are likely to be lost to the public during the recovery to baseline associated with the possible alternatives being considered. The trustee would be required to address both: (1) The possible ways to restore, rehabilitate, replace, and/or acquire equivalent resources; and (2) the estimated lost services associated with each alternative, in a single plan for determining damages.

The trustee would include in the Restoration and Compensation Determination Plan the possible alternatives considered, the lost services associated with each, and the estimated period of recovery associated with each alternative. The trustee would list the cost estimating methodologies he plans to use to estimate the cost of the actions that make up the selected alternative. He would also identify the valuation methodologies he plans to use to value the lost services associated with the selected alternative. The trustee would give a brief rationale for the choice of the selected alternative, of the methodologies to estimate the costs, and those to estimate the compensable value associated with that alternative. This Restoration and Compensation Determination Plan would become part of the overall Assessment Plan, and thus, subject to public review and comment.

If the trustee does not have sufficient information to develop the Restoration and Compensation Determination Plan by the time the Assessment Plan is

made available for public review and comment, the Restoration and Compensation Determination Plan could be developed and made available for public review and comment separately, later in the assessment process, at any time up to the completion of the Quantification Phase. At that point, the trustee will have collected the information concerning the extent of injury and the effects of those injuries on the services provided by the injured natural resources. Whenever the Restoration and Compensation Determination Plan is presented for public review, the trustee would allow at least 30 days for review and comment before proceeding with the cost estimating and valuation of the selected alternative. The Restoration and Compensation Determination Plan, along with the public comments received and responses to those comments, would become part of the Report of Assessment.

Alternatives: In developing the Restoration and Compensation Determination Plan, the trustee would list a "reasonable number" of possible alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. For large, complex assessments involving a variety of resources and services, there may exist a very large number of possible alternatives. When there are potentially a very large number of possible alternatives, only a reasonable number of alternatives, covering the full spectrum of possible alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources, should be developed. The trustee has the discretion to decide on a case-by-case basis what constitutes a reasonable range of possible alternatives.

Range of Actions: In developing each possible alternative, the trustee may consider a range of actions that might include restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. The actions may be taken singly or in any combination. The rule would guide the trustee on how to develop the possible alternatives. The proposed revision emphasizes the wide range of actions available to the trustee to return to baseline levels both the injured natural resources and the services that the natural resources provide to the public. For example, the trustee might consider all or parts of the following kinds of possible alternatives: (1) Intensive restoration or rehabilitation actions that are needed to bring the injured resources and their services back to baseline (pre-spill or pre-release conditions) in a relatively short period of time; (2) restoration, rehabilitation, replacement, and/or acquisition actions combined in a manner that would optimize the recovery of all injured resources and services back to their baseline condition; (3) replacement or acquisition of equivalent resources if the injured resources and their services cannot be restored or rehabilitated through direct management actions or indirect use limitations; or (4) allowing the resources to recover naturally with minimal trustee management action. Moreover, a trustee, or cotrustees, would be afforded the flexibility of defining possible restoration actions to address individual resources or groups of resources in order to adopt an overall restoration strategy that best meets the needs of the trustee(s).

One of the possible alternatives to be considered is allowing the resources to recover naturally, with minimal management actions. Other possible alternatives would provide for actions that reduce the time for recovery to baseline conditions from that expected from natural recovery. In the Restoration and Compensation Determination Plan, the trustee would state the reasons for considering each possible alternative to be viable and worthy of consideration.

Services through Recovery Period: Services provided by an injured resource refer to all of the functions performed by that resource for and/or to the public and to other resources and the interactions between them. The term "services" includes "passive" or "non-consumptive" functions performed by the resource for and/or to the public. The trustee would estimate the loss in services provided by the injured resources from the time of the discharge or release through the estimated recovery period associated with each of a reasonable number of possible alternatives. The recovery period is that time between the occurrence of the discharge or release and the successful completion of the restoration, rehabilitation, replacement, and/or acquisition of the equivalent of the natural resources and their lost services. The trustee would use the determination of the period of resource recovery associated with each alternative to develop an estimate of the services that would be lost to the public during the implementation of that alternative. The services provided by the resource before the discharge or release constitute the baseline level of services against which the trustee is to measure the loss in services for each of the possible alternatives.

Selection of Alternatives: The trustee should select the alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources most appropriate for the particular incident based on a number of different considerations. The proposed revision provides guidance by listing factors that the trustee, at a minimum, shall consider and weigh, among other things, in making this selection. Each of the reasonable number of possible alternatives identified should be evaluated using all relevant factors, but the various alternatives considered may address and balance these factors in different ways. In practice, the alternative selected by the trustee as the most appropriate might not satisfy all of the considerations, yet still be "correct" for the purposes of the assessment. The trustee, after considering all the relevant factors, may make a selection that gives greater weight to some factors over others. The trustee is required to explain, in the Report of the Assessment, the reasoning for giving greater weight to certain factors over others.

Factors to Consider: The trustee should consider all relevant factors in selecting the most appropriate alternative. Each alternative would be considered to the extent that a particular factor was relevant to the actual situation faced by the trustee. The factors listed in the proposed revision are: (1) Technical feasibility; (2) the relationship of the expected costs of the proposed actions to the expected benefits from the restoration, rehabilitation, replacement, and/or acquisition of equivalent resources; (3) cost-effectiveness; (4) the results of any actual or planned response actions; (5) potential for additional injury resulting from the proposed actions, including long-term and indirect impacts, to the 32 injured resource or other resources; (6) the natural recovery period; (7) ability of the resource to recover with or without alternative actions; (8) acquisition of equivalent land for Federal management where restoration, rehabilitation, and/or other replacement of land is not possible; (9) potential effects of the action on human health and safety; and (10) consistency with applicable Federal and State laws and policies. Addressing these factors, the trustee will evaluate the list of possible alternatives and the loss in services associated with each, and select the alternative that combines the most appropriate actions to adopt for the particular incident. Most of the considerations are incorporated from the current rule, and are discussed in Section II. G. of this preamble. The two

factors the court said might be considered are described more fully here, "technical feasibility" and "relationship of costs to benefits."

Technical Feasibility: The trustee should determine whether the actions considered in each alternative would be technically feasible, as that term is used within a natural resource damage assessment. The term "technically feasible" is defined in the type B rule at § 11.14(qq). In the context of an alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources, the term would mean that the technology and management skills necessary to implement an alternative are well known and that each component or action of the alternative has a reasonable chance of successful completion in an acceptable period of time. The trustee is the one who will make the determination of "technically feasible" on a case-by-case basis. This determination will be subject to public review as part of the Assessment Plan, or separately in the public review of the Restoration and Compensation Determination Plan.

Relationship of Costs to Benefits: The trustee should consider the relationship of the expected costs of an alternative to the benefits from the implementation of that alternative, both in terms of the recovery of the resource and the benefits to the public that would result. This consideration is not intended to be a straight cost/benefit analysis. The trustee should weigh circumstances unique to each assessment against the expected alternative costs. Such circumstances might include seasonal conditions, e.g., long winters resulting in a short field sampling season requiring extra personnel, overtime, and high travel costs. All relevant considerations that might affect the weighing of costs and benefits should be taken into account by the trustee on a case-by-case basis. The trustee will document this consideration within the Restoration and Compensation Determination Plan that is subject to public review and comment.

This determination of the relationship of costs to benefits is not an attempt to define in quantitative terms, as suggested by the court, what costs might be "grossly disproportionate" to the value of the services lost. Instead, the proposed revision would require that all of the various factors listed be considered by the trustee in selecting the most appropriate alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. These factors, when considered together, would encompass the "grossly disproportionate" determination suggested by the court.

Costs as a Component of Damages: The proposed revision describes the kinds of items that could be included as "costs" to be recovered, i.e., direct and indirect costs, comparable to the direct and indirect costs of conducting the assessment. The proposed revision describes methodologies that the trustee could use to estimate these direct and indirect costs to restore, rehabilitate, replace, and/or acquire the equivalent resources, based on standard and accepted accounting practices for estimating costs. The proposed revision includes factors for the trustee to use in selecting which cost estimating or valuation methodologies would be best for the selected alternative.

Direct costs are those that are identified by the trustee as charged directly to the conduct of the selected alternative. Direct costs would include trustee agency expenses for a specific action that is a component of the selected alternative, e.g., salaries and benefits, travel costs, materials and supplies purchased specifically for the implementation of the selected alternative, equipment lease costs, building related costs if a building is leased or purchased for the sole purpose of implementing the selected alternative, payments for goods and services furnished by private companies or other government agencies under contract with the trustee agency. Direct costs can also include all costs of other entities performing actions for the trustee agency. These costs could include a contractor's overhead, labor, and material costs, which the contractor would bill directly to the trustee agency. A trustee, however, should take into account the requirements of reasonable cost when identifying and accounting for direct costs.

Under the proposed revision, compensation for indirect costs could be included in the damage claim in one of two ways. The trustee could either identify indirect costs or claim a certain indirect cost rate for expenses. Indirect costs could be based on costs associated with a particular action for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources where there is no direct way to calculate or attribute them to a particular action or series of actions. Such indirect costs could include offsite expenses involved with labor or materials necessary to restore, rehabilitate, replace, and/or acquire the equivalent resources, such as the part of an agency's offsite personnel involved in management or review of actions associated with restoration, or of off-site equipment normally involved in regular agency work being used in part for restoration. Indirect costs may also include the administrative management, policy formulation, and reporting costs.

Instead of computing indirect costs, a trustee agency would be allowed to claim an indirect cost rate for recovery of indirect costs. This recovery of indirect costs could be based upon the trustee agency's established practice. The Department notes that recovery of indirect costs are best accomplished where the trustee agency already has an established indirect cost rate.

Cost Estimating Methodologies: Also by way of guidance, the proposed revision would add a list of particular cost estimating methodologies. As a result of the court's ruling, costs for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources will be a part of the measure of damages in all cases under CERCLA. Therefore, trustees will need guidance in how to estimate, and then collect for, the costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources in a damage assessment. In most cases trustees will need to estimate in advance the total costs of the selected alternative as accurately as possible. Therefore, full descriptions of reliable and accepted costing methodologies are included in the proposed revision to allow trustees unfamiliar with these procedures to capture an estimate of "total costs." In performing their assessments, trustees will want to have this kind of expertise on their assessment team. This guidance simply serves to familiarize trustee managers with this need.

The Department is proposing to include specific examples of standard and accepted cost estimating practices of the accounting profession that may be used to determine the direct and indirect costs of the selected alternative in the claim for damages. Although their individual designs may differ, the purpose of these methodologies, referred to as "cost estimating" methodologies, is to derive the estimate of costs for the performance of actions within the selected alternative that will be sought as part of the claim for damages. The methodologies range from general to comprehensive estimates in which the level and extent of calculations becomes progressively more detailed. The accuracy of the estimate derived from the respective methodologies depends on the amount and quality of information available to prepare the estimate. The trustee's selection of

methodologies will need to reflect these factors along with the general requirement of the rule that selected assessment methodologies represent reasonable costs. Other cost estimating methodologies may be appropriate for a particular action that is part of the selected alternative. Therefore, the proposed revision also includes an acceptance criterion that provides for a trustee to use methodologies other than those listed in the rule so long as those cost estimating methodologies are standard and commonly accepted methodologies of cost accounting. The rationale for the trustee's choice will be noted in the Restoration and Compensation Determination Plan.

Restoration costs are the preferred measure of damages. They will normally be only part of the total damage claim. The other part will be made up of all reliably calculated values, including option and existence values, as described in Section II.D. below. The court's opinion touched on the methodologies for such calculations, as discussed in the following section.

C. Hierarchy of Valuation Methodologies

As initially published, the rule stated that if the trustee determined that the market for the injured resource was "reasonably competitive," then the diminution of the market price attributable to the discharge or release should be used to estimate damages. If the market price methodology was not appropriate then the rule stated that appraisals should be used to estimate damages. Only when neither the market price nor the appraisal methodologies were appropriate for the affected resources being assessed, did the rule allow the trustee to use nonmarket valuation methodologies.

The court ruled that the hierarchy, or ranked order, of valuation methodologies established in the original version of the rule incorrectly established a strong presumption in favor of the market price and appraisal methodologies. The court said that neither CERCLA nor its legislative history showed any Congressional intent to limit use values to market prices. The court said that the damage assessment rule should capture fully all aspects of the public loss.

In response to the Court's ruling, the requirement for choice according to a hierarchy of valuation methodologies is being removed. The trustee may now select among the methodologies—or combination of methodologies—to estimate the economic value of the services provided by the injured natural resources before the injury. In removing the hierarchy requirement for use of various methodologies, the Department is not implying that all valuation methodologies are equally reliable or applicable. Depending on the data available and the nature of the injury, different methodologies may be more or less reliable. The trustee will briefly state his rationale for his choice of any methodology in the Restoration and Compensation Determination Plan that is a part of the overall Assessment Plan.

In cases where the full value of a natural resource is captured by a competitively determined market price, the Department considers the market price methodology to be the most reliable valuation method. The mere presence of a competitive market does not, however, ensure the price will "capture fully" the value of the resource. Where the trustee determines that this is the case, the nonmarketed methodologies may be used. If nonuse values are significant, the only way to quantify these values explicitly is to use the contingent valuation methodology (CVM). CVM is the only nonmarket valuation methodology currently available that is capable of explicitly estimating nonuse values. Thus, for the case of a competitively-sold natural resource with significant nonuse values, the CVM, possibly used in conjunction with the market price methodology, could be used to estimate the value compensable to the public. When nonuse values are not significant, the most reliable valuation methodology to employ for competitively-sold natural resources may be the market price methodology.

Use value damages may be measured using valuation methodologies, known as "revealed preference" methodologies, that are based on observing changes in human behavior and/or actual market transaction data resulting from the injured natural resources (e.g., travel cost model, hedonic pricing, etc., described in the preamble to the August 1986 type B rule). The most common revealed preference valuation methodologies are the market price methodology, land appraisals, factor income methodology, travel cost analysis, and hedonic price analysis. Generally, it is thought that if a value can be quantified using revealed preference methodologies, assuming the needed set of observable data is available, then it is a use value; if it cannot be quantified that way, then it is a nonuse value.

The contingent valuation methodology is not a revealed preference methodology, but it also can be used to quantify use values. The trustee would be free to select any of the listed methodologies for quantifying use values so long as he explains his selection in the Restoration and Compensation Determination Plan. The fact that a use value can be measured using revealed preference methodologies is not a requirement that all use values must be quantified using revealed preference methodologies. The trustee should select the most reliable methodology for quantifying economic value, while at the same time considering cost effectiveness in applying the methodology and the need to complete the assessment at a reasonable cost.

The proposed revision would group the various valuation methodologies by the type of values to be determined and the type of methodology available to determine that type of value. This grouping lists both marketed and nonmarketed methodologies that are available to determine use values. The grouping also reflects the fact that the only methodology currently available to determine nonuse values is the CVM. A further discussion of the CVM can be found in Section II.H. of this preamble.

For estimating use and nonuse values, the trustee should consider the types of economic values involved and the reliability of different valuation methodologies when selecting an overall economic valuation strategy. Once the choice is made, the rationale for the choice would be documented in the Restoration and Compensation Determination Plan.

D. Resource Values

Another issue upon which the type B rule was remanded for revision was the limitation on the recovery of nonuse values. The court said that all reliably calculated values of the resource, including option and existence values, should be recoverable, keeping in mind the proscription in CERCLA that the trustee may not double count.

The rule as it exists already allows for computation of use and nonuse values by various economic methodologies. Their use continues to be allowed under this proposal for valuation of lost services during the period of time between the spill or release and the recovery of the resource. The court decision upheld uses of the various economic methodologies already described in the rule. Thus, the revised rule continues its description of how these methodologies work.

The proposed revision would add a new term, compensable value, to stand for the combination of resource value determinations that will go to make up the damage claim in addition to

restoration costs. Compensable value encompasses all of the public economic values associated with an injured resource, including use values and nonuse values such as option, existence, and bequest values. Natural resources have public economic value because of the variety of services they provide to the public. These services include "passive" or "non-consumptive" uses. When natural resources are injured, the flow of services they provide is apt to be disrupted, thereby resulting in economic damage. Compensable value is a dollar measure of this damage.

The concept of compensable value allows for many different reasons why the public may value natural resources—including reasons not represented by market prices. For example, some individuals might be willing to pay to avoid an injury to a favorite recreation area. Others may be willing to pay to avoid the loss associated with knowing wildlife were injured, even though they will never visit the injured area. This willingness to pay by people who will never visit the area is a nonuse value. It is the natural resource trustee who recovers on behalf of the public for these losses, rather than the individual person. The term compensable value incorporates a wide spectrum of values, and is intended to address the court's ruling that option and existence values may be included as a part of damages.

The rule subdivides compensable value into two parts: use values and nonuse values. Use values refer to economic values that arise because of direct public use of the resource or the services that a resource provides. Some examples of use values include on-site recreation of all types, including hunting, fishing, wildlife viewing, hiking, camping, driving for pleasure, etc.; extractive uses of natural resources, including energy production and mining; use of renewable natural resources to produce products such as timber, fish, or agricultural products; uses of stream flows for irrigation, municipal and industrial water supplies, and for power generation; and transportation services provided by navigation over public waterways, lands, or airspace.

Nonuse values are the difference between compensable value and use values. This concept of nonuse values is being used because there are many categories of nonuse values that have not been consistently defined. Any attempt to categorize explicitly different types of nonuse value would involve arbitrarily selecting a single definition. In contrast, almost all economists accept that the difference between compensable value and use value represents nonuse value. As a practical matter, it is usually not necessary to subdivide among the various types of nonuse values. Included in the definition of nonuse values are the concepts commonly referred to as existence value, bequest value, preservation value, and intrinsic value, which are discussed in the preamble of the August 1986 type B rule. At present, there is controversy over whether option value is more accurately considered a use or nonuse value. Regardless of its category, if it is applicable, it is clearly a part of compensable value.

Although nonuse values can theoretically exist for any natural resource, they are most significant for irreversible or long-lasting changes to well-known, unique natural resources. For environments that quickly recover to the baseline condition following a discharge or release, nonuse values may not normally be significant. Also, an injury to a common natural resource with many substitutes (e.g., a typical small stream), may not generate large nonuse values, particularly for those residing outside the area where the injury occurred, even if the recovery takes a long time. However, a permanent injury to a unique resource (e.g., the Grand Canyon) may generate significant nonuse values, even for those residing in areas far removed geographically from the site where the injury occurred. Trustees might best substantiate their claims for lost nonuse values—particularly as they relate to persons who do not directly use the injured resource—by demonstrating irreversible, or very long-lasting, adverse impacts to unique, widely-recognized natural resources.

For a situation where there are significant use and significant nonuse values potentially at stake, the trustee may wish to first quantify the lost use values using either a marketed or nonmarketed method. He may then wish to quantify the total compensable value (use plus nonuse), using CVM. This dual quantification of use value may help increase the reliability of the assessment because the estimate of use values would not become solely tied to a CVM-based estimate where use and nonuse are estimated simultaneously. If this dual quantification approach is adopted, the trustee would subtract the previously determined use values from the total estimated compensable value in order to arrive at a separate estimate of the nonuse component of the total compensable value.

Compensable value continues to have two important limitations. First, adverse effects on human health could not be included within compensable value because they are not covered under the natural resource damage liability provisions of CERCLA. Second, compensable value would not include any private economic damages related to the secondary or indirect economic effects on individuals, businesses, or other non-governmental organizations associated with a discharge or release, and the associated cleanup activities. For example, an oil spill may have regional economic impacts that cause some private businesses to grow (e.g., charter boats for cleanup) and others to diminish (e.g., resort hotels). Although private individuals might gain or lose money as a result of these activities, the losses cannot be included in compensable value because they are not covered in the natural resource provisions of CERCLA. Only losses related to the public's use of the injured resource, or the services provided by the resource, are included in compensable value.

E. Scope of Public Ownership

The court asked for a clarification of the Department's views on the extent to which the natural resource damage assessment rule applies to natural resources that are privately owned. Commenters to the Department on this rulemaking offered no previously validated criteria or readily transferable procedure for such determination. Several commenters said that trustees must have the flexibility to determine the scope of their trusteeship on a case-by-case basis. Therefore, the proposed revision in response to the court's concern directs the trustee, or co-trustees, to state briefly the authority for asserting trusteeship, or co-trusteeship, in the Assessment Plan, and also in the Notice of Intent to Perform an assessment that is sent to the potentially responsible party. In describing the natural resources of concern to the trustee, the trustee will cite the relevant treaty or other provision of international law, constitution, statute, common law, regulation, order, deed or other conveyance, permit, or agreement providing the basis for the trusteeship. This authority statement within the Assessment Plan, which is available for public review and comment, will enable an early notice to the public as to the trustee's assertion of trusteeship. This statement in the Notice of Intent to Perform an Assessment will also serve to inform the potentially responsible party of the various agencies involved in an assessment and of their natural resource concerns.

On the issue of the scope of public ownership of natural resources, the court did not dispute the rule, but asked the Department for "its consideration and explanation" of the rule insofar as it may extend to natural resources not "owned" by a government entity. The court concluded that CERCLA, primarily the definition of natural resources, and its legislative history mean that purely private resources are excluded from the natural resource damage provisions. CERCLA defines natural resources as "land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by" the United States, any State or local government, any foreign government, or any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe. The court noted that the rule defines the term "natural resources" consistent with the statutory definition found in section 101(16) of CERCLA.

The court looked at the preamble to the final type B rule that said "Section 101(16) of CERCLA clearly indicates that privately-owned natural resources are not to be included in natural resource damage assessments" (54 FR 27696). The court understood the Department's oral argument to suggest that a substantial degree of government regulation, management, or other form of control over natural resources could be sufficient to make the natural resource damage provisions apply to such resources in certain circumstances. The court did not call for any changes in the definition of natural resources in the rule itself. However, the court suggested that it would be too narrow a reading of the statute to prohibit recovery for publicly-managed natural resources that were privately owned. Thus, the court asked the Department to clarify whether the application of the rule might extend to lands not owned by a government entity.

In response, the Department notes that it had not meant to suggest that recoveries under the rule hinge solely on ownership or exercise of a formal document transferring the property to a government entity. The Department used in its rule the CERCLA definition of natural resources that provides for various degrees of government regulation, management or other form of control over the natural resources to make the CERCLA natural resource damage provisions applicable. The rule repeats the statutory language of "belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by," and thus covers a broad range of government interest in natural resources on behalf of the public. Pursuant to that language, general sources of authority for recovery under the rule could include, but not necessarily be limited to, relevant treaty or other provision of international law, constitution, statute, common law, regulation, order, deed or other conveyance, permit, or agreement.

The statutory phrase "belonging to" connotes ownership and would cover government-owned lands, as well as resources affixed, i.e., permanently attached, to such lands. However, the remaining terms, "managed by, held in trust by, appertaining to, or otherwise controlled by," ensure a wide range of legitimate government interest in natural resources that may, in fact, be held in private ownership.

F. Other Significant Revisions

Need for preliminary estimate: One other revision is related to the way the Department is proposing to amend the rule in accordance with the court's ruling that restoration costs be the preferred measure of damages. As described in section II.B. above, the Department is proposing to remove the requirement that the trustee base his damage determination on the lesser of restoration costs or the diminution in use values. This "lesser of" requirement was contained in the Economic Methodology Determination of § 11.35. The Economic Methodology Determination in the existing rule served two purposes: (1) To establish the method of determining damages to be used in conducting the assessment; and (2) to assist in ensuring that the assessment as planned could be performed at a reasonable cost. Although the "lesser of" requirement would be removed, it is still important to plan for an assessment that could be performed at a reasonable cost. Therefore, it would still be necessary for the trustee to develop a preliminary estimate of damages that may prove to be recoverable before he begins the development of an Assessment Plan. This preliminary estimate would help to structure the Injury Determination, Quantification, and Damage Determination phases of the assessment.

Thus, the proposed revision keeps the idea that the trustee must develop a preliminary estimate of the anticipated costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and the compensable value of the lost services resulting from the discharge or release. The trustee uses this "preliminary estimate of damages" solely for the purpose of scoping the Assessment Plan to ensure that the assessment will be performed at a reasonable cost. The proposed revision would provide guidance to the trustee to make this preliminary estimate at the assessment planning stage, although the estimate may be revised as the assessment proceeds. The trustee would make this preliminary "back-of-the-envelope" estimate based on existing information. The trustee would include this estimate in the Report of the Assessment at the end of the assessment.

Statute of Limitations: With respect to the period in which actions may be brought for natural resource damages, section 113(g) of CERCLA provides that

> * * * no action may be commenced for damages * * * unless that action is commenced within 3 years after the later of the following:
>
> (A) The date of the discovery of the loss and its connection with the release in question.
>
> (B) The date on which regulations are promulgated under section 301(c).

For the purposes of the statute of limitations encompassed by (B), the "date on which regulations are promulgated" is the date upon which both sections of the rule, type A and type B, including the court-ordered revisions, become effective as a final rule.

G. Factors to Consider in Selecting Alternatives

Section II.B. above notes factors to consider in selecting the actions that will comprise the trustee's selected alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent of the injured resources. Two of those factors were recommended by the court, and were detailed in Section II.B. Several other factors represent considerations already inherent in the existing rule. There are other considerations in selecting an alternative, such as:

Cost-effectiveness: Cost-effectiveness is defined in the damage assessment rule as achieving an objective with the least expenditure of financial or other assets. Cost-effectiveness generally means that whenever the same or a similar benefit can be obtained in several ways, the least costly means of obtaining that benefit is selected. Cost-effectiveness is not intended to be used as a measure to select between alternatives or actions that provide very different levels of benefits at different costs.

Response Actions: The law and the existing rule provide that natural resource damages are for injuries

residual to those injuries that may be mitigated in the response action. In some instances it may be necessary to anticipate an eventual or continued response or remedial action in planning a natural resource damage assessment. In addition, the damages include compensation for the lost services from the time of the injury caused by the discharge or release until resource recovery results from actions to restore, rehabilitate, replace, and/or acquire equivalent resources.

Additional Injury: Actions to carry out a proposed alternative could in themselves result in additional injury to the injured resource or to other resources. The trustee should consider whether the actions for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources would result in an unreasonable amount of long-term and indirect impacts on other resources.

Ability of the Resource to Recover: The trustee should consider the ability of the injured resource to recover naturally and/or with assistance by various actions. This consideration encompasses whether all important and measurable services of the lost or injured resources are being restored.

Recovery Period: The trustee should estimate the time necessary for recovery, both without restoration efforts beyond the removal or remedial action and normal management practices, and with alternative actions to restore, rehabilitate, replace, and/or acquire equivalent resources. The trustee should then consider the extent to which the alternative would lessen the period of recovery of the resource and its services when compared to the estimated period of natural recovery absent any actions on the part of the trustee. This recovery period will be determined according to the facts of the given site or incident situation.

Federal Land Acquisition: Federal trustees should generally consider first restoration, rehabilitation, or replacement actions, looking to the acquisition of land to carry out some component of a possible alternative when restoration, rehabilitation, or replacement are not feasible. This consideration would apply only to acquisition of land by Federal trustees.

Human Health and Safety: The trustee should consider whether any actions of the alternative under consideration would be likely to have any adverse impact on human health and safety.

Other Laws and Policies: The trustee should look to applicable Federal and State law or policy, including his own agency's mandates, to ensure that the alternative is consistent with any directives and policies concerning administration of his programs and responsibilities. A potential conflict would have to be considered and resolved if that alternative were to be selected.

H. Considerations in using the Contingent Valuation Methodology (CVM)

Compensable value, discussed in Section II.D. of this preamble, includes both use and nonuse values. The Court ruled that CVM is a "best available technology." For nonmarketed use values, such as those associated with publicly provided outdoor recreation, CVM, when properly applied, has produced values comparable to values based on "revealed preference" methods.

It is difficult to get a consensus on the reliability of CVM. It may be much harder to set up a hypothetical market for nonuse values, such as a unique recreational opportunity that respondents have never taken or the existence of an endangered species they will never see, than it is to set up a hypothetical market for resource use opportunities with which respondents are quite familiar. It is currently difficult to get a consensus as to whether it is possible to set up hypothetical markets to measure nonuse values to the same degree that is possible to define existing markets to determine use values compared to the reliability of values based on the revealed preference approaches. A body of research comparing nonuse values to values based on revealed preference approaches does not yet exist to the same degree as for CVM use values. Thus, it is more difficult to evaluate the reliability of CVM nonuse values, compared to use values. It is because of this that the Department has characterized CVM, when used to determine nonuse values, as the least reliable method.

Nevertheless, CVM is the only method currently available for estimating nonuse values. A trustee should, at the outset of a damage assessment, determine whether nonuse values are likely to be a significant part of compensable value. As noted in Section II.D., the magnitude of the injury, its irreversible or long-term effects, the uniqueness of the resources involved, and other such factors are likely to be important in this determination.

In order to help the trustee in the application of CVM, the following books may be of assistance: Cummings, Donald G., Brookshire, David S., and Schulze, William D.; Valuing Environmental Goods: An Assessment of the Contingent Valuation Method; Rownan & Allanheld; Totowa, NJ (1986); and Mitchell, Robert C., and Carson, Richard T.; Using Surveys to Value Public Goods: The Contingent Valuation Method; Resources for the Future; Washington, DC (1989).

The trustee should always attempt to use the most reliable method to estimate the dollar value of all the components of compensable value. The proposed revision makes a distinction between the methodologies listed for determining use and nonuse values. In the Department's view, the reliability of CVM varies greatly, and is dependent upon the type of values quantified. When CVM is used to quantify use values alone, it is judged to be just as reliable as the other nonmarket valuation methodologies. When CVM is used to quantify use values alone, the survey population would normally consist of actual users of the resource. Use value estimates based on general population surveys would be considered in the least reliable category when survey respondents are asked to allocate a portion of their bid to nonuse values. When CVM is used to quantify either nonuse alone or use plus nonuse values, it is in the least reliable category of the other nonmarketed valuation methods. As the state of the art advances, CVM estimates of nonuse values may become more reliable. Although any estimates of nonuse will generally be less reliable than corresponding estimates of use values, the Department recognizes that CVM is the only method available to determine explicitly nonuse values.

III. Annotated List of Sections to be Revised

Section 11.13 would be revised to state that the Damage Determination phase includes guidance on determining damages based on the costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources, plus the compensable value.

Section 11.14(qq) would be revised to replace the reference to the Restoration Methodology Plan with a reference to the Restoration and Compensation Determination Plan.

Section 11.15(a)(3)(ii) would be revised to include the costs of planning and undertaking the restoration, rehabilitation, replacement, and/or acquisition of equivalent resources among recoverable damages.

Section 11.30(c)(1) would be revised to include the costs of making the preliminary estimate of damages among recoverable assessment costs.

Section 11.31(a)(2) would be revised to include the trustee's statement of authority for asserting trusteeship in the Assessment Plan.

Section 11.31(c)(2), referring to the Economic Methodology Determination, would be removed.

Section 11.31(c)(4) would be added to include the Restoration and Compensation Determination Plan of § 11.81 in the Assessment Plan.

Section 11.32(a)(2) would be revised to include the trustee's statement of authority for asserting trusteeship in the Notice of Intent to Perform an Assessment that is sent to the potentially responsible party.

Section 11.32(f)(2) would be revised to remove the reference to the Economic Methodology Determination of the old § 11.35.

Section 11.32(f)(3) would be revised to include the trustee's statement of authority for asserting trusteeship in the Assessment Plan.

Section 11.35 would be revised to remove the Economic Methodology Determination (the "lesser of" requirement). This language would be replaced with the preliminary estimate of damages, in which the trustee would make a preliminary estimate of the costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and compensable value.

Section 11.60(d)(1) would be revised to replace the reference to the Restoration Methodology Plan with the reference to the Restoration and Compensation Determination Plan and to replace the phrase "Use value methodology" with "Valuation methodology."

Section 11.71(a)(2) would be revised to delete the reference to the Economic Methodology Determination.

Section 11.71(1)(4) would be revised to restate that baseline data are needed for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources efforts *and* for calculation of compensable value.

Section 11.72 (b)(4) would be revised to remove the reference to the Economic Methodology Determination.

Section 11.73(a) would be revised to replace the reference to the old § 11.81 with the reference to the revised § 11.82 and to replace "restoration" with "restoration, rehabilitation, replacement, and/or acquisition of equivalent resources."

Sections 11.80, 11.81, 11.82, and 11.83 would be replaced with new sections providing guidance on determining damages based on the cost of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources, plus compensable value. (See Section III of this preamble.)

Section 11.80 would incorporate references to the new materials and organization of §§ 11.81, 11.82, and 11.83.

Section 11.81 would be revised to call for the development of the Restoration and Compensation Determination Plan that is part of the Assessment Plan. The trustee would list in the Restoration and Compensation Determination Plan a reasonable number of possible alternative actions to restore, rehabilitate, replace, and/or acquire the equivalent of the injured resources; identify the alternative selected; and identify the methodologies to be used to estimate the costs and compensable value. Provisions would also be made for the public review of the Restoration and Compensation Determination Plan for times when that plan cannot be made available with the rest of the Assessment Plan.

Section 11.82 would describe the phrase alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and would give: (1) Guidance on the development and selection of the alternative; and (2) guidance on estimating the loss of services and period of recovery associated with each possible alternative.

Section 11.83 would be revised to combine consideration and estimation of the costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and compensable value into one unit. This section would give guidance on the types of costs (i.e., direct and indirect) to include in the damage estimate and guidance on methodologies the trustee may use to estimate those costs. This section would also describe the term "compensable value" to include use and nonuse values, to allow recovery of the total value lost to the public.

Section 11.84, implementation guidance, would be revised to reflect the determination of damages based on the estimated costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources plus compensable value.

Section 11.90 would be revised to replace the reference to the Restoration Methodology Plan with a reference to the Restoration and Compensation Determination Plan.

Section 11.91 would be revised to establish the time period within which natural resource damage actions may be brought.

Section 11.92 would be revised to replace references to "restoration" actions with actions for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

Section 11.93 would be revised to reflect the use of sums recovered to restore or replace the injured resource and the services it provided prior to the discharge or release.

IV. Response to Comments

A. General

The Advance Notice of Proposed Rulemaking (ANPRM) published in **Federal Register** by the Department on September 22, 1989, requested comments on the following kinds of questions to assist in carrying out the court ordered revisions: (1) What possible considerations might trigger the use of a measure of damages other than restoration costs; (2) should the rule provide criteria and, if so, what criteria might be used to determine whether restoration is "technically feasible;" (3) should the rule define the term "grossly disproportionate" and, if so, how; (4) how much guidance should the rule include and what would be possible selection criteria to make available to the trustee in selecting the most appropriate methodology to determine lost use values; (5) what available systems for classifying resource uses exist, as to use and nonuse, etc., which would also aid the trustee to avoid double counting; and (6) what degree and type of management, regulation, control, or property interest might make natural resources subject to the provisions of CERCLA for the purposes of enabling public trustees to recover damages for injuries to such resources?

The comments received in response to these questions covered a wide range of issues and points of view. Few comments, however, had specific technical suggestions or language that could be used in the revision of the rule. Although there is no consensus among the commenters on any of the issues being considered in the revision, most of the commenters expressed the opinion that the decisions concerning "grossly disproportionate" and "technically infeasible" should be left to the judgment of the trustee on a case-by-case basis. Differing points of view were expressed on whether guidance should be provided to the trustee in either the preamble or the rule itself.

The issue of the economic methodologies resulted in a split of opinion among the commenters. Some commenters said that the trustee should be free to choose among the list provided in the current rule. Others felt that there should be criteria or guidance given in the rule to guide trustees in

their decisions as to which methodologies should be used in a particular situation.

On the issue of the application of the rule to natural resources not "owned" by a government entity, comments also represented a split of opinion as to whether guidance or criteria should be given to trustees.

Finally, many commenters provided extensive suggestions concerning criteria and/or guidance on the use of contingent valuation methodology in a natural resource damage assessment, a subject which was not an issue in the court remand.

B. Restoration Costs as Measure of Damages

The court's decision established restoration costs as the preferred measure of damages in a natural resource damage assessment. However, the court suggested that there might be times when the trustee could use a different measure of damages. Therefore, in the ANPRM of September 22, 1989, the Department asked what possible considerations might trigger the use of a measure of damages other than restoration costs in various stages of an assessment. Commenters presented a broad range of opinions on what those factors might include.

All of the commenters either stated or implied that there might be times when a trustee would not be able to use restoration costs as the measure of damages. When commenters directly addressed the issue of what considerations might trigger the use of a different measure of damages, they basically discussed whether to give the trustee specific criteria in the rule itself, or to give no guidance. Quite a few of the commenters said that the decision as to the measure of damage should be made on a case-by-case basis by the trustee based on best professional judgment, with no guidance or criteria given in the rule.

Other commenters said that some guidance or criteria are needed within the rule because a rebuttable presumption will be granted to the assessment. These commenters listed certain factors that should be considered by a trustee: the degree to which the restoration actions would shorten the rate of recovery; the feasibility, utility, and cost of restoration actions; the degree to which restoration actions would avoid injury or destruction of other resources and significant risks to human health and the environment; the degree to which substitute resources nearby would lessen the need for total restoration; and whether the restoration actions are "reasonable."

Some of the commenters who said that restoration costs should be the measure of damages said that although the Department might develop or suggest some exceptions to that measure, these exceptions should *never* be allowed in cases where: (1) There is willful misconduct or negligence on the part of the PRP, or (2) where "special" resources, i.e., resources that have been identified for special protection, have been injured. Another commenter said that the trustee should be required to always base a natural resource damage assessment on restoration costs, or lose the benefit of the rebuttable presumption, even if the trustee found that restoration was impossible.

Response: The court said that restoration costs are to be the preferred measure of damages under CERCLA and the Clean Water Act, but suggested that there might be situations where "exceptions" to this measure would be warranted. After careful consideration of CERCLA, the court decision, and the comments received, the Department finds that exceptions to this preferred measure of damages are not needed. The law requires sums recovered as damages for injuries to natural resources to be used "only to restore, replace, or acquire the equivalent of such resources" (CERCLA 107(f)(1)). Therefore, within the rule, the term "restoration" includes restoration or rehabilitation, as well as replacement or acquisition of equivalent resources. So long as the term "restoration" is always understood to include also "replacement or acquisition of the equivalent," there would always be some part of the trustees' work effort that will constitute "restoration." Thus, there is no need for "exceptions" to the use of restoration costs as the preferred measure of damages. The proposed revision uses the phrase restoration, rehabilitation, replacement, and/or acquisition of equivalent resources to reinforce the idea that the possible alternatives would include a mixture of all actions.

Putting this idea in terms of trustee actions, the trustee will be looking at a range of possible alternatives that could restore or replace the resource, and the services provided by that resource to the public or to other resources before the discharge or release in question. To do this, the trustee considers allowing the resource to recover naturally, with a minimal amount of trustee management action; the trustee considers intensive restoration or replacement actions that would bring the injured resource and its services back to baseline in a shorter period of time than natural recovery would take; and, the trustee considers replacement or acquisition of equivalent resources in cases where the injured resource cannot be restored. (In actual practice, the trustees' choices will likely be combinations of these actions.) Whatever the case, there will be some restoration costs, and, therefore, there need be no exception to the rule that restoration costs form the preferred measure of damages. Even if the trustee were to choose natural recovery, restoration costs would cover whatever minimal management actions were appropriate (e.g., preventing public access, or monitoring the condition of the resource).

The total bill for damages will include the costs of the selected alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources added to a dollar figure computed for the compensable value of the services lost to the public for the period of the recovery—whether a natural recovery, which might be longer, or an assisted recovery, which might be shorter. If the selected alternative encompasses minimal restoration activities and a long recovery period, the value of lost services, in most cases, would form a higher proportion of the total damages claimed. If the selected alternative includes maximum restoration activities and a shorter recovery period, then the value of lost services, in most cases, would be a smaller proportion of the total damages. In each instance, both restoration costs and compensable value will be represented.

The revised rule would instruct the trustee to select the most appropriate method of restoring or replacing the resource and its services, based upon several considerations. The kinds of concerns expressed by the commenters are included in these selection factors. For example, factors the trustee would now consider in evaluating a particular alternative would include: the technical feasibility of the alternative; the extent to which the alternative is likely to reduce the recovery period; whether the estimated cost of the alternative would be proportionate to the expected benefits to the resource and to the public; the possibility of the alternative itself having an adverse impact on resources that have been set aside for special protection; applicability of any other statute to resources affected by the proposed restoration alternative; and other considerations that might be applicable to that resource. (See section II. B. of this preamble.)

The trustee, using his expertise and best professional judgment, and

applying factors such as those above, will be able to determine the most appropriate course of action to restore or replace the injured resource and the services it provides to the public. The selection of the alternative would be subject to public review when the Restoration and Compensation Determination Plan is published for public review and comment.

C. Technically Feasible

In the ANPRM of September 22, 1989, the Department asked if the revised rule should give criteria on the subject of whether restoration is "technically feasible" and, if so, what criteria might be used.

The majority of the commenters said that the determination of "technically feasible" should be left to the judgment of the trustee on a case-by-case basis. Some of these commenters said that there should not be guidance or criteria in the rule. Other commenters said that there should be specific guidance given within the rule on "technically feasible." Other commenters suggested specific revisions to the current definition of the term "technically feasible."

Response: The Department agrees that determination of technical feasibility should continue to be left to the trustee in the proposed revision. The rule already defines the term "technically feasible," at § 11.14(qq). Within the rule, the term means that the technology and management skills necessary to implement an assessment are well known and that each element of the plan has a reasonable chance of successful completion in an acceptable period of time. The proposed revision would not change that definition. Technical feasibility depends upon site-specific circumstances. Therefore, the Department can only give a generic definition that the trustee must apply in each instance.

D. Grossly Disproportionate

In the ANPRM of September 22, 1989, the Department asked whether or not the rule should define the term "grossly disproportionate" and, if so, how should it be defined. The court decision had suggested a factor of three times the value of the loss in use as the area where restoration costs could be viewed as disproportionate.

Almost all commenters said there should be no numeric factor such as that suggested by the court for determining when restoration costs are "grossly disproportionate" to the value of the services of the resource that are lost to the public. Many of these commenters said that "grossly disproportionate" should be determined by the best professional judgment of the trustee on a case-by-case basis, with no guidance or criteria given in the rule. Some said costs should be reasonable. On the other hand, several commenters said that some guidance should be given within the rule.

A few commenters said that a numeric factor might be helpful. One commenter suggested a sliding scale where the factor by which restoration costs are multiplied decreases as the magnitude of damages increases. An alternative approach suggested by some commenters would be to use a "reasonableness" standard, with a "grossly disproportionate" determination used only to determine when costs would be prohibitive. Some commenters said that, if the Department were to give guidance on this issue, such guidance should not apply to resources that have been set aside for special protection.

Response: The Department agrees that there should not be a numeric standard imposed upon a trustee to make a "grossly disproportionate" determination for establishing natural resource damages. The proposed revision provides that the decisionmaking process includes factors that help keep in balance the several possible elements of the damage assessment, all of which would be added together to arrive at the damage claim. The proposed revision provides that the trustee would choose to conduct some actions for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources in all instances, whether as a smaller or larger proportion of the total possible damage claim, and that the costs of these actions will be included in total damages claimed along with all reliably calculated compensable value. The proposed revision would require the trustee to consider the expected costs of the actions as a factor in selecting the appropriate alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. The determination is left to the judgment of the trustee based upon a comparison of the expected costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources with both the length of the recovery period and the loss in services to the public during that recovery period. If such a numeric factor were to consist of the sliding scale comparing estimated costs and compensable value as suggested by the one commenter, it could not take into account all the factors a trustee should consider in making a "grossly disproportionate" determination in each case.

Reasonableness is not listed in the proposed revision as a separate factor to consider, since all of the factors listed should enter into the trustee's decisionmaking as to the "reasonableness" of the selected alternative. Overall, the guidance in the proposed revision is intended to aid the trustee in making reasonable choices, using his best judgement in light of the various circumstances of the particular case. Trustee decisions and the justification for them appear in the Restoration and Compensation Determination Plan to be published for public comment.

E. Economic Methodologies

In the ANPRM of September 22, 1989, the Department asked how much guidance to include in the rule and what possible selection criteria could be made available to the trustee on selecting the most appropriate methodology to determine lost use values.

Several of the commenters said that no criteria, or even guidance, on the selection of economic methodologies should be given in the rule. Other commenters, however, said that some guidance or criteria should be given as to which methodology should be used under specific circumstances. One of these commenters suggested that the Department should direct the trustee to use the most reliable of the possible methodologies applicable to a particular incident or to document why a less reliable methodology was chosen by the trustee for the assessment. The commenter said that, where a trustee uses a less reliable technique for valid reasons, certain defined parameters must be met to use that technique. Other commenters suggested specific guidance that the Department should provide in the rule to direct the trustee in the choice of a methodology.

A large portion of the comments received on the question of selection criteria for choosing an economic valuation methodology dealt instead with the validity of, and the allowance for, contingent valuation methodology (CVM) in a natural resource damage assessment. Comments in effect reiterated the arguments for and against CVM that the court had heard. Several commenters provided technical suggestions on guidelines for applying CVM in an assessment. While the use of CVM was specifically at issue in the court's review, it was upheld by the court. For that reason, the use of CVM was no longer at issue, and was not included in the Department's ANPRM of September 22, 1989. Nevertheless, several commenters did provide general

technical information concerning the application of the contingent valuation methodology.

Response: Though it has deleted the requirement for trustees to choose economic methodologies in a particular order or hierarchy, the Department has maintained the general list of economic valuation methodologies that may be used in conducting a natural resource damage assessment pursuant to the rule. The description of that listing reflects the generally accepted reliability of the methodologies, including that of CVM. The Department has decided not to include required criteria for selection of an economic valuation methodology since that could be perceived to be equally as constraining as the original constraints to which the court objected. Instead, the proposed revision provides factors the trustee would consider in selecting both cost estimating and valuation methodologies or a combination of those methodologies. The proposed revision asks the trustee to choose, and to explain his choice briefly.

The use of CVM was expressly upheld by the court, thus no change was required within its description, once constraints on its use were deleted. Thus, it remains in the revised rule as an acceptable methodology that may be used by trustees. Considerations in using the CVM are discussed in section II.H. of this preamble.

F. Resource Values

In the ANPRM of September 22, 1989, the Department asked what systems might be available for classifying different types of resource uses, as to use and nonuse, etc., which might also aid the trustee to avoid double counting.

A number of commenters said that trustees should be able to assess all resource values within an ecosystem to allow full recovery of all damages. Several of these commenters said that there should be no guidance or criteria in the rule that would constrain the exercise of judgment of the trustee in his decisions on what and how to value those resources.

Several commenters suggested criteria for the trustee to follow in order to assess and recover for "nonuse" values of injured resources. While some commenters said that there should be some classification of resource values to avoid double counting, others concluded that there is no need for any guidance on double counting since use and nonuse values are concurrent. One commenter said that the Department should not attempt, at this time, to construct a system for classifying resource uses that would further define such uses beyond that of use and nonuse. The commenter said that there is an element of arbitrariness in any system of classification and recommended that the rule acknowledge the importance of the total value of the flow of services from natural resources. The commenter said that the rule should distinguish between use and nonuse values primarily on the basis of the availability of indirect or observational methods (e.g., travel cost models) for measuring use values. Beyond this, there should be no further attempt to distinguish among various categories of nonuse values.

Response: In accordance with the court's order, the proposed revision no longer contains the restriction that limited recovery of "nonuse" values to only those cases where the trustee could determine no "direct" use values. Instead, the trustee may recover all "compensable value." Compensable value is defined in broad terms to include all values for the services provided to the public by the resources, including "passive" or "nonconsumptive" uses of the resources.

As the definition of "compensable value" is written, all values lost to the public, both use and nonuse, of a resource resulting from an incident may be recovered. The trustee is to make a decision to seek recovery for any component of those values on a case-by-case basis. Reasonable costs, uncertainty of the estimates, and the potential for double counting are among the factors that the trustee is to consider in determining the categories of compensable value that will be sought.

The definition of "compensable value" includes a description of "use" and "nonuse" to aid the trustee in avoiding double counting and to clarify the extent of compensable value for which the trustee may claim damages. The Department has, of course, retained the prohibition on double counting, since it is a statutory requirement.

G. Public Resources

The court requested clarification on the application of the rule to natural resources not "owned" by a government entity, noting that preamble language in the existing rule appeared to provide an overly narrow interpretation of the law. In the ANPRM of September 22, 1989, the Department asked for comments as to what degree and type of management, regulation, control, or property interest should make natural resources subject to the provisions of CERCLA for the purposes of enabling public trustees to recover damages for injuries to such resources.

A few of the commenters said that there should be no change in the rule concerning "public resources," but that preamble language should be added to clarify this issue. Several commenters said that the determination of a "public resource" should be left to the judgment of the trustee on a case-by-case basis.

One commenter suggested a continuum of public interest, from purely government ownership, to purely private interest. Other commenters suggested the kinds of interest (substantial connections) that would allow recovery under CERCLA and also cited problems that might result from allowing overly-broad recoveries by public trustees.

Response: The court did not directly remand this issue to the Department to provide a regulatory definition of "public resources," rather it asked for clarification. Neither the public comments received nor the Department's analysis of its various jurisdictions has yielded a definitive line between public resources and private. In general, the Department agrees that this determination must be left to the trustee. The trustee, as the one who has the responsibility for the management and protection of the resources, is the one best able to determine whether he has trust responsibilities for a particular resource. Thus, the proposed revision of the rule would ask the trustee to cite the basis for his trusteeship in the Assessment Plan which is presented for public comment.

The Department disagrees that the lack of a regulatory definition of "public resources" would necessarily result in "overly-broad recoveries." Apparently, no comparable decision process already exists as a model among trustees' or other commenters' current management practice. No clear position was suggested or reached during Department of the Interior staff discussions on the amount and nature of guidance to be offered trustees in making this determination, nor on whether the guidance should be presented in an interpretive rule or as information discussed in preamble language. The question remains open and may be addressed in the final rulemaking for the proposed revisions or in the biennial reviews, based on further comments that may be received. In time, experience gained from the proposed revision's new requirement for the trustee to select and explain the authority on which that trustee bases a particular natural resource damage claim should assist the Department in developing further guidance.

National Environmental Policy Act, Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act

The Department of the Interior has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, no further analysis pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (43 U.S.C. 4332(2)(C)) has been prepared.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The rule provides technical procedural guidance for the assessment of damages to natural resources. It does not directly impose any additional cost. In addition, the estimate of the potential economic effects of this rule is well below $100 million annually. As the rule applies to natural resource trustees, it is not expected to have an effect on a substantial number of small entities. The information collection requirement contained in § 11.41(c) has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1084–0025.

List of subjects in 43 CFR Part 11

Continental shelf, Environmental protection, Fish, Forests and forest products, Grazing land, Indian lands, Hazardous substances, Mineral resources, National forests, National parks, Natural resources, Oil pollution, Public lands, Wildlife, Wildlife refuges.

Under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and the Superfund Amendments and Reauthorization Act of 1986, and for the reasons set out in the preamble, title 43, subtitle A of the Code of Federal Regulations is proposed to be amended as set forth below.

Dated: March 15, 1991.

John E. Schrote,

Acting Assistant Secretary, Policy, Management, and Budget.

PART 11—NATURAL RESOURCE DAMAGE ASSESSMENTS

1. The authority citation for part 11 continues to read as follows:

Authority: 42 U.S.C. 9651(c), as amended.

Subpart A—Introduction

2. Section 11.13 is amended by revising paragraph (e)(3) to read as follows:

§ 11.13 Overview.

* * * * *

(e) * * *

(3) *Damage Determination phase.* The purpose of this phase is to establish the appropriate compensation expressed as a dollar amount for the injuries established in the Injury Determination phase and measured in the Quantification phase. The sections of subpart E of this part comprising the Damage Determination phase include guidance on acceptable cost estimating and valuation methodologies for determining compensation based on the costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources, plus compensable value.

* * * * *

3. Section 11.14 is amended by revising paragraph (qq) to read as follows:

§ 11.14 Definitions.

* * * * *

(qq) *Technical feasibility* or *technically feasible* means that the technology and management skills necessary to implement an Assessment Plan or Restoration and Compensation Determination Plan are well known and that each element of the plan has a reasonable chance of successful completion in an acceptable period of time.

* * * * *

4. Section 11.15 is amended by revising paragraph (a)(3)(ii) to read as follows:

§ 11.15 Actions against the responsible party for damages.

(a) * * *

(3) * * *

(ii) Administrative costs and expenses necessary for, and incidental to, the assessment, assessment planning, and restoration, rehabilitation, replacement, and/or acquisition of equivalent resources planning, and any restoration, rehabilitation, replacement, and/or acquisition of equivalent resources undertaken; and

* * * * *

Subpart C—Assessment Plan Phase

5. Section 11.30 is amended by revising paragraph (c)(1)(v) to read as follows:

§ 11.30 Assessment Plan—general.

* * * * *

(c) * * *

(1) * * *

(v) Preliminary estimate of damages costs; and

* * * * *

6. Section 11.31 is amended by revising paragraph (a)(2), removing paragraph (c)(2), removing the word "and" at the end of paragraph (c)(3) and replacing the period at the end of paragraph (c)(4) with the words "; and", redesignating paragraphs (c)(3) and (c)(4) as paragraphs (c)(2) and (c)(3) respectively, and adding a new paragraph (c)(4) to read as follows:

§ 11.31 Assessment Plan—content.

(a) * * *

(2) The Assessment Plan shall be of sufficient detail to serve as a means of evaluating whether the approach used for assessing the damage is likely to be cost-effective and meets the definition of reasonable costs, as those terms are used in this part. The Assessment Plan shall include descriptions of the natural resources and the geographical areas involved. The Assessment Plan shall also include a statement of the authority for asserting trusteeship, or co-trusteeship, for those natural resources considered within the Assessment Plan. In addition, for type B assessments, the Assessment Plan shall include the sampling locations within those geographical areas, sample and survey design, numbers and types of samples to be collected, analyses to be performed, preliminary determination of the recovery period, and other such information required to perform the selected methodologies.

* * * * *

(c) * * *

(4) The Restoration and Compensation Determination Plan developed in accordance with the guidance in § 11.81 of this part. If existing data are not sufficient to develop the Restoration and Compensation Determination Plan as part of the Assessment Plan, the Restoration and Compensation Determination Plan may be developed later, at any time before the completion of the Injury Determination or Quantification phases. If the Restoration and Compensation Determination Plan is published separately, the public review and comment will be conducted pursuant to § 11.81(d) of this part.

7–8. Section 11.32 is amended by revising paragraphs (a)(2)(iii)(A) and (f)(2), and by removing paragraph (f)(3) to read as follows:

§ 11.32 Assessment Plan—development.

(a) *Pre-development requirements.*

* * *

(2) * * *

(iii)(A) The authorized official shall send a Notice of Intent to Perform an Assessment to all identified potentially responsible parties. The Notice shall invite the participation of the potentially responsible party, or, if several parties are involved and if agreed to by the lead authorized official, a representative or representatives designated by the parties, in the development of the type and scope of the assessment and in the performance of the assessment. The Notice shall briefly describe, to the extent known, the site, vessel, or facility involved, the discharge of oil or release of hazardous substance of concern to the authorized official, and the resources potentially at risk. The Notice shall also contain a statement of authority for asserting trusteeship, or co-trusteeship, over those natural resources identified as potentially at risk.

* * * * *

(f) *Plan review.* * * *

(2) The purpose of this review is to ensure that the selection of methodologies for the Quantification and Damage Determination phases is consistent with the results of the Injury Determination phase, and that the use of such methodologies remains consistent with the requirements of reasonable cost, as that term is used in this part.

9. Section 11.35 is revised to read as follows:

§ 11.35 Assessment Plan—preliminary estimate of damages.

(a) *Requirements.* When performing a type B assessment pursuant to the requirements of subpart E of this part, the authorized official shall develop a preliminary estimate of: the anticipated costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources for the injured natural resources; and the compensable value, as defined in § 11.83(c) of this part, of the natural resources. This preliminary estimate is referred to as the preliminary estimate of damages. The authorized official shall use the guidance provided in this section, to the extent possible, to develop the preliminary estimate of damages.

(b) *Purpose.* The purpose of the preliminary estimate of damages is for reference in the scoping of the Assessment Plan to ensure that the choice of the scientific, cost estimating, and valuation methodologies expected to be used in the damage assessment fulfills the requirements of reasonable costs, as that term is used in this part. The trustee will also use the preliminary estimate of damages in the review of the Assessment Plan as required in § 11.32(f) of this part, to ensure the requirements of reasonable costs are still met.

(c) *Steps.* The authorized official shall make a preliminary estimate of damages, i.e., the anticipated costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources for the injured natural resources and the services those resources provide, plus the anticipated compensable value of the lost services to the public through the period of time until completion of the restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and recovery of the services. The preliminary estimate of damages should include consideration of the ability of the resource to recover naturally and the compensable value through the recovery period with and without possible alternative actions. The authorized official shall consider the following factors, to the extent possible, in making the preliminary estimate of damages.

(1) The preliminary estimate of costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources should include consideration of a range of possible alternative actions that would accomplish the restoration, rehabilitation, replacement, and/or acquisition of equivalent resources of the injured natural resources.

(i) The preliminary estimate of costs should take into account the effects, or anticipated effects, of any response actions.

(ii) The preliminary estimate of costs also should represent the expected present value of anticipated costs, expressed in constant dollars, and should include direct and indirect costs, and include the timing of those costs. The provisions detailed in §§ 11.81–11.84 of this part are the basis for the development of the estimate.

(iii) The discount rate to be used in developing the preliminary estimate of costs shall be that determined in accordance with the guidance in § 11.84(e) of this part.

(2) The preliminary estimate of compensable value should be consistent with the range of possible alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources being considered.

(i) The preliminary estimate of compensable value should represent the expected present value of the anticipated compensable value, expressed in constant dollars, accrued through the period for the restoration, rehabilitation, replacement, and/or acquisition of equivalent resources to baseline conditions, i.e., between the occurrence of the discharge or release and the completion of the restoration, rehabilitation, replacement, and/or acquisition of the equivalent of the injured resources and their services. The estimate should use the same base year as the preliminary estimate of costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. The provisions detailed in §§ 11.81–11.84 of this part are the basis for the development of this estimate.

(ii) The preliminary estimate of compensable value should take into account the effects, or anticipated effects, of any response actions.

(iii) The discount rate to be used in developing the preliminary estimate of compensable value shall be that determined in accordance with the guidance in § 11.84(e) of this part.

(d) *Content and timing.* (1) In making the preliminary estimate of damages, the authorized official should rely upon existing data and studies. The authorized official should not undertake significant new data collection or perform significant modeling efforts at this stage of the assessment planning phase.

(2) Where possible, the authorized official should make the preliminary estimate of damages before the completion of the Assessment Plan as provided for in § 11.31 of this part. If there is not sufficient existing data to make the preliminary estimate of damages at the same time as the assessment planning phase, this analysis may be completed later, at the end of the Injury Determination phase of the assessment, at the time of the Assessment Plan review.

(3) The preliminary estimate of damages, along with its assumptions and methodology, shall be included in the Report of the Assessment as provided for in § 11.91 of this part.

(e) *Review.* The authorized official shall review, and revise as appropriate, the preliminary estimate of damages at the end of the Injury Determination and Quantification phases. If there is any significant modification of the preliminary estimate of damages, the authorized official shall document it in the Report of the Assessment.

Subpart E—Type B Assessments

10. Section 11.60 is amended by revising paragraphs (d)(1) (iii) and (iv) to read as follows:

§ 11.60 Type B assessments—general.

* * * * *

(d) *Type B assessment costs.* (1) * * *

(iii) Restoration and Compensation Determination Plan development costs including:

(A) Development of alternatives;

(B) Evaluation of alternatives;

(C) Potentially responsible party, agency, and public reviews;

(D) Other such costs for activities authorized by § 11.81 of this part;

(iv) Cost estimating and valuation methodology calculation costs; and

* * * * *

11. Section 11.71 is amended by revising paragraphs (a)(2) and (l)(4)(ii) to read as follows:

§ 11.71 Quantification phase—service reduction quantification.

(a) * * *

(2) This determination of the reduction in services will be used in the Damage Determination phase of the assessment.

* * * * *

(l) *Biological resources.* * * *

(4) * * *

(ii) Provide data that will be useful in planning efforts for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources, and in later measuring the success of those efforts, and that will allow calculation of compensable value; and

* * * * *

12. Section 11.72 is amended by revising paragraph (b)(4) to read as follows:

§ 11.72 Quantification phase—baseline services determination.

* * * * *

(b) * * *

(4) Baseline data collection shall be restricted to those data necessary for conducting the assessment at a reasonable cost. In particular, data collected should focus on parameters that are directly related to the injury quantified in § 11.71 of this part and to data appropriate and necessary for the Damage Determination phase.

* * * * *

13. Section 11.73 is amended to revise paragraph (a) to read as follows:

§ 11.73 Quantification phase—resource recoverability analysis.

(a) *Requirement.* The time needed for each injured resource to recover to the state that the authorized official determines services are restored, rehabilitated, replaced, and/or the equivalent have been acquired to baseline levels shall be estimated. The time estimated for recovery or any lesser period of time as determined in the Assessment Plan shall be used as the recovery period for purposes of § 11.35 and the Damage Determination phase, §§ 11.80 through 11.84, of this part.

(1) In all cases, the amount of time needed for recovery if no restoration, rehabilitation, replacement, and/or acquisition of equivalent resources efforts are undertaken beyond response actions performed or anticipated shall be estimated. This time period shall be used as the "No Action-Natural Recovery" period for purposes of § 11.82 and § 11.84(g)(2)(ii) of this part.

(2) The estimated time for recovery shall be included in possible alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources, as developed in § 11.82 of this part, and the data and process by which these recovery times were estimated shall be documented.

* * * * *

14. Section 11.80 is revised to read as follows:

§ 11.80 Damage determination phase—general.

(a) *Requirement.* (1) The authorized official shall make his damage determination by estimating the monetary damages resulting from the discharge of oil or release of a hazardous substance based upon the information provided in the Quantification phase and the guidance provided in this Damage Determination phase.

(2) The Damage Determination phase consists of § 11.80—general; § 11.81—Restoration and Compensation Determination Plan; § 11.82—alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources; § 11.83—cost estimating and valuation methodologies; and § 11.84—implementation guidance, of this part.

(b) *Purpose.* The purpose of the Damage Determination phase is to establish the amount of money to be sought in compensation for injury to natural resources resulting from a discharge of oil or release of a hazardous substance. The measure of damages is the cost of restoration, rehabilitation, replacement, and/or acquisition of the equivalent of the injured natural resources and the services those resources provide, plus the compensable value of the services lost to the public for the time period from the discharge or release until the attainment of the restoration, rehabilitation, replacement, and/or acquisition of equivalent of the resources and their services to baseline.

(c) *Steps in the Damage Determination phase.* The authorized official shall develop a Restoration and Compensation Determination Plan, described in § 11.81 of this part. To prepare this Restoration and Compensation Determination Plan, the authorized official shall develop a reasonable number of possible alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and select, pursuant to the guidance of § 11.82 of this part, the most appropriate of those alternatives; and identify the cost estimating and valuation methodologies, described in § 11.83 of this part, that will be used to calculate damages. The guidance provided in § 11.84 of this part shall be followed in implementing the cost estimating and valuation methodologies, as appropriate. After public review of the Restoration and Compensation Determination Plan, the authorized official shall implement the Restoration and Compensation Determination Plan.

(d) *Completion of the Damage Determination phase.* Upon completion of the Damage Determination phase, the type B assessment is completed. The results of the Damage Determination phase shall be documented in the Report of Assessment described in § 11.90 of this part.

15. Section 11.81 is revised to read as follows:

§ 11.81 Damage Determination phase—Restoration and Compensation Determination Plan.

(a) *Requirement.* (1) The authorized official shall develop a Restoration and Compensation Determination Plan that will list a reasonable number of possible alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and the related services lost to the public associated with each; select one of the alternatives and the actions required to implement that alternative; give the rationale for selecting that alternative; and identify the methodologies that will be used to determine the costs of the selected alternative and to determine the compensable value of the services lost to the public associated with the selected alternative.

(2) The Restoration and Compensation Determination Plan shall be of sufficient detail to evaluate the possible alternatives for the purpose of selecting the appropriate alternative to use in determining the cost of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources for the injured natural resources and the services those resources provided, plus the compensable value of the services lost to the public through the completion

of the restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and their services to the baseline.

(b) The authorized official shall use the guidance in §§ 11.82, 11.83, and 11.84 of this part to develop the Restoration and Compensation Determination Plan.

(c) The authorized official shall list the methodologies he expects to use to determine the costs of all actions considered within the selected alternative and to determine the compensable value of the lost services through the recovery period associated with the selected alternative. The methodologies to use in determining costs and compensable value are described in § 11.83 of this part.

(d)(1) The Restoration and Compensation Determination Plan shall be part of the Assessment Plan developed in subpart B of this part. If existing data are not sufficient to develop the Restoration and Compensation Determination Plan at the time that the overall Assessment Plan is made available for public review and comment, the Restoration and Compensation Determination Plan may be developed later, after the completion of the Injury Determination or Quantification phases.

(2) If the Restoration and Compensation Determination Plan is prepared later than the Assessment Plan, it shall be made available separately for public review by any identified potentially responsible party, other natural resource trustees, other affected Federal or State agencies or Indian tribes, and any other interested members of the public for a period of no less than 30 calendar days. Reasonable extensions may be granted as appropriate.

(3) Comments received from any identified potentially responsible party, other natural resource trustees, other affected Federal or State agencies or Indian tribes, or any other interested members of the public, together with responses to those comments, shall be included as part of the Report of Assessment, described in § 11.90 of this part.

(4) Appropriate public review of the plan must be completed before the authorized official performs the methodologies listed in the Restoration and Compensation Determination Plan.

(e) The Restoration and Compensation Determination Plan may be expanded to incorporate requirements from procedures required under other portions of CERCLA or the CWA or from other Federal or State statutes applicable to restoration or replacement of the injured resource or may be combined with other plans for related purposes, so long as the requirements of this section are fulfilled.

16. Section 11.82 is revised to read as follows:

§ 11.82 Damage Determination phase—alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

(a) *Requirement.* The authorized official shall develop a reasonable number of possible alternatives for the restoration, rehabilitation, replacement, and/or acquisition of the equivalent of the injured natural resources and the services those resources provide. For each possible alternative developed, the authorized official will identify an action, or set of actions, to be taken singly or in combination by the trustee agency to achieve the restoration, rehabilitation, replacement, and/or acquisition of equivalent natural resources and the services those resources provide to the baseline. The authorized official shall then select from among the possible alternatives the alternative that he determines to be the most appropriate based on the guidance provided in this section.

(b) *Steps.* (1) The authorized official shall develop a reasonable number of possible alternatives that would restore, rehabilitate, replace, and/or acquire the equivalent of the injured resources. Each of the possible alternatives may, at the discretion of the authorized official, consist of actions, singly or in combination, that would achieve those purposes.

(i) Restoration or rehabilitation actions are those actions undertaken to return an injured resource to its baseline condition, as measured in terms of the injured resources' physical, chemical, or biological properties or the services previously provided by those resources. Such actions would be in addition to response actions completed or anticipated pursuant to the National Contingency Plan (NCP).

(ii) Replacement or acquisition of the equivalent means the substitution for an injured resource with a resource that provides the same or substantially similar services, when such substitutions are in addition to any substitutions made or anticipated as part of response actions and when such substitutions exceed the level of response actions determined appropriate to the site pursuant to the NCP.

(iii) Possible alternatives are limited to those actions that restore, rehabilitate, replace, and/or acquire the equivalent of the injured resources and services to no more than their baseline, that is, the condition without a discharge or release as determined in § 11.72 of this part.

(2) *Services provided by the resources.* (i) In developing each of the possible alternatives, the authorized official shall list the proposed actions that would restore, rehabilitate, replace, and/or acquire the equivalent of the services provided by the injured natural resources that have been lost, and the period of time over which these services would continue to be lost.

(ii) The authorized official shall identify services previously provided by the resource in its baseline condition in accordance with § 11.72 of this part and compare those services with services now provided by the injured resource, that is, the with-a-discharge-or-release condition. All estimates of the with-a-discharge-or-release condition shall incorporate consideration of the ability of the resource to recover as determined in § 11.73 of this part.

(c) *Range of possible alternatives.* (1) The possible alternatives considered by the authorized official that return the resource and its lost services to baseline level could range from: intensive action on the part of the authorized official to return the various resources and services provided by that resource to baseline conditions as quickly as possible; to natural recovery with minimal management actions. Possible alternatives within this range could reflect varying rates of recovery, combination of management actions, and needs for resource replacements or acquisitions.

(2) An alternative considering natural recovery with minimal management actions, based upon the "No Action-Natural Recovery" determination made in § 11.73(a)(1) of this part, shall be one of the possible alternatives considered.

(d) Factors to consider in selecting which alternative to pursue. In selecting which alternative to pursue, the authorized official shall evaluate each of the possible alternatives based on all relevant considerations, including the following factors, when appropriate:

(1) Technical feasibility, as that term is used in this part.

(2) The relationship of the expected costs of the proposed actions to the expected benefits from the restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

(3) Cost-effectiveness, as that term is used in this part.

(4) The results of any actual or planned response actions.

(5) Potential for additional injury resulting from the proposed actions, including long-term and indirect

impacts, to the injured resource or other resources.

(6) The natural recovery period determined in § 11.73(a)(1) of this part.

(7) Ability of the resource to recover with or without alternative actions.

(8) Acquisition of equivalent land for Federal management where restoration, rehabilitation, and/or other replacement of land is not possible.

(9) Potential effects of the action on human health and safety.

(10) Consistency with applicable Federal and State laws and policies.

17. Section 11.83 is revised to read as follows:

§ 11.83 Damage determination phase—cost estimating and valuation methodologies.

(a) *General.* (1) This section contains guidance and methodologies for determining:

(i) The costs of the selected alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources; and

(ii) The compensable value of the services lost to the public through the completion of the restoration, rehabilitation, replacement, and/or acquisition of the equivalent of the injured resources and their services to baseline.

(2)(i) The authorized official shall select among the cost estimating and valuation methodologies set forth in this section, or methodologies that meet the acceptance criterion of either paragraph (b)(3) or (c)(3) of this section.

(ii) The authorized official shall define the objectives to be achieved by the application of the methodologies.

(iii) The authorized official shall follow the guidance provided in this section for choosing among the methodologies that will be used in the Damage Determination phase.

(iv) The authorized official shall describe his selection of methodologies and objectives in the Restoration and Compensation Determination Plan.

(3) The authorized official shall determine that the following criteria have been met when choosing among the cost estimating and valuation methodologies. The authorized official shall document this determination in the Report of the Assessment. Only those methodologies shall be chosen:

(i) That are feasible and reliable for a particular incident and type of damage to be measured.

(ii) That can be performed at a reasonable cost, as that term is used in this part.

(iii) That avoid double counting.

(iv) That are cost-effective, as that term is used in this part.

(b) *Costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.* (1) Costs for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources are the amount of money determined by the authorized official as necessary to complete all actions identified in the selected alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources, as selected in the Restoration and Compensation Determination Plan of § 11.81 of this part. Such costs shall include direct and indirect costs, consistent with the provisions of this section.

(i) Direct costs are those that are identified by the authorized official as attributed to the selected alternative. Direct costs are those charged directly to the conduct of the selected alternative including, but not limited to, the compensation of employees for the time and effort devoted to the completion of the selected alternative; cost of materials acquired, consumed, or expended specifically for the purpose of the action; equipment and other capital expenditures; and other items of expense identified by the authorized official that are expected to be incurred in the performance of the selected alternative.

(ii) Indirect costs are costs of activities or items that support the selected alternative, but that cannot practically be directly accounted for as costs of the selected alternative. The simplest example of indirect costs is traditional overhead, e.g., a portion of the lease costs of the buildings that contain the offices of trustee employees involved in work on the selected alternative may, under some circumstances, be considered as an indirect cost. In referring to costs that cannot practically be directly accounted for, this subpart means to include costs that are not readily assignable to the selected alternative without a level of effort disproportionate to the results achieved.

(iii) An indirect cost rate for overhead costs may, at the discretion of the authorized official, be applied instead of calculating indirect costs where the benefits derived from the estimation of indirect costs do not outweigh the costs of the indirect cost estimation. When an indirect cost rate is used, the authorized official shall document the assumptions from which that rate has been derived. Such amounts determined in lieu of indirect costs shall be treated as an offset to the total indirect costs of the selected alternative before allocation to the remaining activities. The base upon which such remaining costs are allocated should be adjusted accordingly.

(2) *Cost estimating methodologies.* The authorized official may choose among the cost estimating methodologies listed in this section or may chose other methodologies that meet the acceptance criterion in paragraph (b)(3) of this section.

(i) *Comparison Methodology.* This methodology may be used for unique or difficult design and estimating conditions. This methodology requires the construction of a simple design for which an estimate can be found and applied to the unique or difficult design.

(ii) *Unit Methodology.* This methodology derives an estimate based on the cost per unit of a particular item. Many other names exist for describing the same basic approach, such as order of magnitude, lump sum, module estimating, flat rates, and involve various refinements. Data used by this methodology may be collected from technical literature or previous cost expenditures.

(iii) *Probability Methodologies.* Under these methodologies, the cost estimate represents an "average" value. These methodologies require information which is called certain, or deterministic, to derive the expected value of the cost estimate. Expected value estimates and range estimates represent two types of probability methodologies that may be used.

(iv) *Factor Methodology.* This methodology derives a cost estimate by summing the product of several items or activities. Other terms such as ratio and percentage methodologies describe the same basic approach.

(v) *Standard Time Data Methodology.* This methodology provides for a cost estimate for labor. Standard time data are a catalogue of standard tasks typically undertaken in performing a given type of work.

(vi) *Cost- and Time-Estimating Relationships (CERs and TERs).* CERs and TERs are statistical regression models that mathematically describe the cost of an item or activity as a function of one or more independent variables. The regression models provide statistical relationships between cost or time and physical or performance characteristics of past designs.

(3) Other cost estimating methodologies. Other cost estimating methodologies that are based upon standard and accepted cost accounting practices and are cost-effective are acceptable methodologies to determine the costs of restoration, rehabilitation,

replacement, and/or acquisition of equivalent resources under this part.

(c) *Compensable value.* (1) Compensable value is the amount of money required to compensate the public for the loss in services provided by the injured resources between the time of the discharge or release and the time the resources and the services those resources provided are fully restored to their baseline conditions. The compensable value includes the value of lost public use of the services provided by the injured resources, plus lost nonuse values such as option, existence, and bequest values. Compensable value is measured by changes in consumer surplus, economic rent, and any fees or other payments collectable by the government or Indian tribe for a private party's use of the natural resource; and any economic rent accruing to a private party because the government or Indian tribe does not charge a fee or price for the use of the resource. Compensable value does not include any losses related to secondary economic impacts caused by the discharge or release.

(i) Use value is the value of the resources to the public attributable to the direct use of the services provided by the natural resources.

(ii) Nonuse value is the difference between compensable value and use value, as those terms are used in this section.

(2) *Valuation Methodologies.* The authorized official may choose among the valuation methodologies listed in this section to estimate willingness to pay or may choose other methodologies provided that the methodology can satisfy the acceptance criterion in paragraph (c)(3) of this section. The following methodologies are grouped as "use value: marketed methodologies," "use value: nonmarketed methodologies," and "nonuse value: contingent valuation methodology." Generally, the "use value: marketed valuation methodologies" are more reliable than the "use value: nonmarketed valuation methodologies," which, in turn, are more reliable than the "nonuse value: contingent valuation methodology." Nothing in this section precludes the use of a combination of valuation methodologies so long as the authorized official does not double count.

(i) Use value: marketed valuation methodologies.—(A) *Market price methodology.* This methodology may be used if the natural resource is traded in the market. In using this methodology, the authorized official should make a determination as to whether the market for the resource is reasonably competitive. If the authorized official determines that the market for the resource, or the services provided by the resource, is reasonably competitive, the diminution in the market price of the injured resource, or the lost services, may be used to determine the compensable value of the injured resource.

(B) *Appraisal Methodology.* Where sufficient information exists, the appraisal methodology may be used. In using this methodology, compensable value should be measured, to the extent possible, in accordance with the applicable sections of the "Uniform Appraisal Standards for Federal Land Acquisition" (Uniform Appraisal Standards), Interagency Land Acquisition Conference, Washington, DC, 1973 (incorporated by reference, see § 11.18). The measure of compensable value under this appraisal methodology will be the difference between the with- and without-injury appraisal value determined by the comparable sales approach as described in the Uniform Appraisal Standards.

(ii) *Use value: nonmarketed valuation methodologies.*—(A) *Factor Income Methodology.* If the lost resource is an input to a production process, which has as an output a product with a well-defined market price, the factor income methodology may be used. This methodology may be used to determine the economic rent associated with the use of a resource in the production process. This methodology is sometimes referred to as the "reverse value added" methodology. The factor income methodology may be used to measure the in-place value of the resource.

(B) *Travel Cost Methodology.* The travel cost methodology may be used to determine a value for the use of a specific area. An individual's incremental travel costs to an area are used as a proxy for the price of the services of that area. Compensable value of the area to the traveler is the difference between the value of the area with- and without-a-discharge-or-release. When regional travel cost models exist, they may be used if appropriate.

(C) *Hedonic Pricing Methodology.* The hedonic pricing methodology may be used to determine the value of nonmarketed resources by an analysis of private market choices. The demand for nonmarketed natural resources is thereby estimated indirectly by an analysis of commodities that are traded in a market.

(D) *Contingent Valuation Methodology.* The contingent valuation methodology includes all techniques that set up hypothetical markets to elicit an individual's economic valuation of a natural resource. In order to fall within the "use valuation: nonmarketed methodologies" category, the contingent valuation methodology must be limited to quantifying use values.

(E) *Unit Value Methodology.* Unit values are preassigned dollar values for various types of nonmarketed recreational or other experiences by the public. Where feasible, unit values in the region of the affected resource and unit values that closely resemble the recreational or other experience lost with the affected resource may be used.

(iii) *Nonuse value: Contingent Valuation Methodology.* The contingent valuation methodology includes all techniques that set up hypothetical markets to elicit an individual's economic valuation of a natural resource. If the contingent valuation methodology is used to quantify nonuse values, or use plus nonuse values, then it falls within this category.

(3) *Other valuation methodologies.* Other valuation methodologies that measure compensable value in accordance with the public's willingness to pay, in a cost-effective manner, are acceptable methodologies to determine compensable value under this part.

18. Section 11.84 is amended by revising paragraphs (a), (b)(1), (d)(2), (f), and (g) heading, (1), (2) introductory text, (i), (ii), and (iii); removing paragraph (h); and redesignating paragraph (i) as new paragraph (h) and revising it to read as follows:

§ 11.84 Damage Determination phase—implementation guidance.

(a) *Requirement.* The authorized official should use the cost estimating and valuation methodologies in § 11.83 of this part following the appropriate guidance in this section.

(b) *Determining uses.* (1) Before estimating damages for the compensable value under § 11.83 of this part, the authorized official should determine the uses made of the resource services identified in the Quantification phase.

* * * * *

(d) *Uncertainty.* * * *

(2) To incorporate this uncertainty, the authorized official should derive a range of probability estimates for the important assumptions used to determine damages. In these instances, the damage estimate will be the net expected present value of the costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and compensable value.

* * * * *

(f) *Substitutability.* In calculating the compensable value, the authorized official should incorporate estimates of the ability of the public to substitute resource services or uses for those of the injured resource services. This substitutability should be estimated only if the potential benefits from an increase in accuracy are greater than the potential costs.

(g) *Compensable value during the restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.* (1) In determining the amount of damages, the authorized official should also compute the compensable value for the period of time required to achieve the restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

(2) To calculate the compensable value during the period of time required to achieve restoration, rehabilitation, replacement, and/or acquisition of equivalent resources, the authorized official should follow the procedures described below. The procedures need not be followed in sequence.

(i) The ability of the resource to recover over the recovery period should be estimated. This estimate includes estimates of natural recovery rates as well as recovery rates that reflect management actions or resource acquisitions to achieve restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

(ii) A recovery rate should be selected for this analysis that is based upon cost-effective management actions or resource acquisitions, including a "No Action-Natural Recovery" alternative. After the recovery rate is estimated, the compensable value should be estimated.

(iii) The rate at which the uses of the injured resources and their services will be restored through the restoration or replacement of the services should be estimated. This rate may be discontinuous, that is, no uses are restored until all, or some threshold level, of the services are restored, or continuous, that is, restoration or replacement of uses will be a function of the level and rate of restoration or replacement of the services. Where practicable, the supply of and demand for the restored services should be analyzed, rather than assuming that the services will be utilized at their full capacity at each period of time in the analysis. The compensable value should be discounted using the rate described in paragraph (e)(2) of this section. This estimate is the expected present value of uses obtained through restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

* * * * *

(h) *Scope of the analysis.* (1) The authorized official must determine the scope of the analysis in order to estimate the compensable value.

(2) In assessments where the scope of analysis is Federal, only the compensable value to the Nation as a whole should be counted.

(3) In assessments where the scope of analysis is at the State level, only the compensable value to the State should be counted.

(4) In assessments where the scope of analysis is at the tribal level, only the compensable value to the tribe should be counted.

Subpart F—Post-Assessment Phase

19. Section 11.90 is amended by revising paragraph (c) to read as follows:

§ 11.90 Post-assessment phase—Report of Assessment.

* * * * *

(c) *Type B assessments.* For a type B assessment conducted in accordance with the guidance in subpart E of this part, the Report of Assessment shall consist of all the documentation supporting the determinations required in the Injury Determination phase, the Quantification phase, and the Damage Determination phase, and specifically including the test results of any and all methodologies performed in these phases. The preliminary estimate of damages shall be included in the Report of Assessment. The Restoration and Compensation Determination Plan, along with comments received during the public review of that Plan and responses to those comments, shall also be included in the Report of Assessment.

20. Section 11.91 is amended to add a paragraph (e) to read as follows:

§ 11.91 Post-assessment phase—demand.

* * * * *

(e) *Statute of limitations.* The date on which regulations are promulgated for the purposes of section 113(g) of CERCLA is the date upon which the court-ordered revisions for both type A and type B, whichever is later, become effective as a final rule.

21. Section 11.92 is amended to revise paragraph (b) to read as follows:

§ 11.92 Post-assessment phase—restoration account.

(a) * * *

(b) *Adjustments.* (1) In establishing the account pursuant to paragraph (a) of this section, the calculation of the expected present value of the damage amount should be adjusted, as appropriate, whenever monies are to be placed in a non-interest bearing account. This adjustment should correct for the anticipated effects of inflation over the time estimated to complete expenditures for the restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

(2) In order to make the adjustment in paragraph (b)(1) of this section, the authorized official acting as trustee should adjust the damage amount by the rate payable on notes or bonds issued by the United States Treasury with a maturity date that approximates the length of time estimated to complete expenditures for the restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

* * * * *

22. Section 11.93 is amended to revise paragraph (a) to read as follows:

§ 11.93 Post-assessment phase—Restoration Plan.

(a) Upon determination of the amount of the award of a natural resource damage claim as authorized by section 107(a)(4)(C) of CERCLA, or section 311(f)(4) and (5) of the CWA, the authorized official shall prepare a Restoration Plan as provided in section 111(i) of CERCLA. The plan shall be based upon the Restoration and Compensation Determination Plan described in § 11.81 of this part. The Plan shall describe how the monies will be used to address natural resources, specifically what restoration, replacement, or acquisition of the equivalent resources will occur. The Plan shall also describe how monies will be used to address the services that are lost to the public until restoration, rehabilitation, replacement, and/or acquisition of equivalent resources is completed. The Restoration Plan shall be prepared in accordance with the guidance set forth in § 11.81 of this part.

* * * * *

[FR Doc. 91-9690 Filed 4-26-91; 8:45 am]
BILLING CODE 4310-RG-M

federal register

Monday
April 29, 1991

Part IV

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Research: Proposed Actions Under the Guidelines and Advisory Committee Meeting; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Advisory Committee; Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee on May 30–31, 1991. The meeting will be held at the Embassy Suites Hotel, 4300 Military Road, NW., Washington, DC 20015, in the Chevy Chase Rooms 1 and 2, starting at approximately 9 a.m. on May 30 to adjournment at approximately 3 p.m. on May 31. The meeting will be open to the public to discuss the following proposed actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules (51 FR 16958, May 7, 1986):

Proposed Major Actions to the NIH Guidelines;

Five additions to appendix D of the NIH Guidelines Regarding Human Gene Transfer Protocols;

Amend Section I–C–2 and delete Section III–A–2 in its entirety of the NIH Guidelines regarding deliberate release into the environment of any organism containing recombinant DNA, except certain plants as described in Appendix L.

Amend the Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA into the Genome of Human Subjects: (1) To eliminate the review responsibilities of the Human Gene Therapy Subcommittee from the approval process of human gene therapy protocols as described in the Introduction, Sections 4, 6, 7, 9, 10, 12; (2) to totally transfer the review responsibilities of the Human Gene Therapy Subcommittee to the parent committee, the Recombinant DNA Advisory Committee, as described in the Introduction, Section 1 and 4; and (3) to have more explicit directives for animal model systems and cell culture studies in Section I–B–2.

Amend Appendices B–I–B–1 and B–I–B–2 of the NIH Guidelines to include only pathogenic genera and species of the bacterial order, Actinomycetales, in the current list of microorganisms.

Review the proposal for a registry of gene transfer patients entitled: "The Gene Transfer Patient and Provider Network (GENTRANET)".

Other Matters To Be Considered by the Committee.

Attendance by the public will be limited to space available. Members of the public wishing to speak at this meeting may be given such opportunity at the discretion of the Chair.

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, telephone (301) 496–9838, fax (301) 496–9839, will provide materials to be discussed at this meeting, roster of committee members, and substantive program information. A summary of the meeting will be available at a later date.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: April 22, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–9999 Filed 4–26–91; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Recombinant DNA Research: Proposed Actions Under the Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of Proposed Actions Under the NIH Guidelines for Research Involving Recombinant DNA Molecules (51 FR 16958, May 7, 1986).

SUMMARY: This notice sets forth proposed actions to be taken under the National Institutes of Health (NIH) Guidelines for Research Involving Recombinant DNA Molecules. Interested parties are invited to submit comments concerning these proposals. These proposals will be considered by the Recombinant DNA Advisory Committee (RAC) at its meeting on May 30–31, 1991. After consideration of these proposals and comments by the RAC, the Director of the National Institutes of Health will issue decisions in accordance with the NIH Guidelines.

DATES: Comments received by May 20, 1991, will be reproduced and distributed to the RAC for consideration at its May 30–31, 1991, meeting.

ADDRESSES: Written comments and recommendations should be submitted to Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, Building 31, room 4B11, National Institutes of Health Bethesda, Maryland 20892, or sent by fax to 301–496–9839.

All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from the Office of Recombinant DNA Activities, Building 31, room 4B11, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–9838.

SUPPLEMENTARY INFORMATION: The NIH will consider the following actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules:

I. Addition to Appendix D of the "NIH Guidelines" Regarding a Human Gene Transfer Protocol/Dr. Lotze

In a letter dated September 13, 1990, Dr. Michael T. Lotze of the University of Pittsburgh School of Medicine indicated his intention to submit a human gene transfer protocol to the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is:

"The Administration of Interleukin-2, Interleukin-4, and Tumor Infiltrating Lymphocytes to Patients with Melanoma."

The protocol was reviewed during the Human Gene Therapy Subcommittee meeting on November 30, 1990, and forwarded to the Recombinant DNA Advisory Committee on February 4, 1991, for their approval. The Recombinant DNA Advisory Committee deferred approval and sent the protocol back to the Human Gene Therapy Subcommittee for further deliberations on April 5, 1991.

On April 5, 1991, the Human Gene Therapy Subcommittee gave provisional approval with the stipulation that more

information be provided about the quantitative assays of gene marked tumor infiltrating lymphocytes. It was suggested that the consent form concerning the gene marking be separated form the consent from regarding interleukin-2 and interleukin-4.

The Human Gene Therapy Subcommittee forwarded the protocol to the Recombinant DNA Advisory Committee for consideration during the May 30–31, 1991, meeting.

II. Addition to Appendix D of the "NIH Guidelines" Regarding a Human Gene Transfer Protocols/Dr. Brenner

In a letter dated February 22, 1991, Dr. Malcolm K. Brenner of St. Jude Children's Research Hospital indicated his intention to submit two human gene transfer protocols to the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee for formal review and approval.

The first protocol is entitled: "A Phase I/II Trial of High-Dose Carboplatin and Etoposide with Autologous Marrow Support for Treatment of Stage D Neuroblastoma in First Remission: Use of Marker Genes to Investigate the Biology of Marrow Reconstitution and the Mechanism of Relapse."

The second protocol is entitled: "A Phase II Trial of High-Dose Carboplatin and Etoposide with Autologous Marrow Support for Treatment of Relapse/Refractory Neuroblastoma Without Apparent Bone Marrow Involvement: Use of Marker Genes to Investigate the Biology of Marrow Reconstitution and the Mechanism of Relapse." This second protocol was reviewed during the Human Gene Therapy Subcommittee meeting on November 30, 1990. The protocol was deferred with a request for additional data and further consideration at the next meeting on April 5, 1991.

On April 5, 1991, the Human Gene Therapy Subcommittee gave provisional approval to both protocols with the stipulation that reviewers further evaluate Dr. Brenner's procedures for in vitro bone marrow assays to detect residual tumor. Second, a provision for early termination of the protocol needs to be developed if the relapse rate in the patient population exceeds the statistical predictions.

The Human Gene Therapy Subcommittee forwarded these protocols to the Recombinant DNA Advisory Committee for consideration during the May 30–31, 1991, meeting.

III. Addition to Appendix D of the "NIH Guidelines" Regarding a Human Gene Transfer Protocol/Dr. Deisseroth

In a letter dated December 20, 1990, Dr. Albert B. Deisseroth of the MD Anderson Cancer Center indicated his intention to submit a human gene transfer protocol to the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is:

"Autologous Transplantation for Chronic Myelogenous Leukemia: Retroviral Marking to Discriminate Between Relapses Arising from Residual Systemic Disease vs. Residual Contamination of Autologous Marrow."

The protocol was considered during the April 5, 1991, Human Gene Therapy Subcommittee meeting. The Human Gene Therapy Subcommittee gave provisional approval with the stipulation that there be a major revision of the consent form including text for differentiating the gene transfer part of the research from the other part of the research. Additional data needs to be provided about the level of neomycin resistance gene expression and BCR–Abl gene expression in colonies of cells isolated during blast crisis.

The Human Gene Therapy Subcommittee forwarded this protocol to the Recombinant DNA Advisory Committee for consideration during the May 30–31, 1991 meeting.

IV. Addition to Appendix D of the "NIH Guidelines" Regarding a Human Gene Transfer Protocol/Drs. Ledley and Woo

In a letter dated December 19, 1990, Drs. Fred D. Ledley and Savio L.C. Woo of the Baylor College of Medicine indicated their intention to submit a human gene transfer protocol to the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is:

"Hepatocellular Transplantation in Acute Hepatic Failure and Targeting Genetic Markers to Hepatic Cells."

This protocol was considered during the April 5, 1991, Human Gene Therapy Subcommittee meeting. The Human Gene Therapy Subcommittee gave provisional approval with the stipulation that more data be provided about the transduction efficiency of the neomycin resistance gene in human hepatocytes. Additional changes need to be made in the consent form which will clarify the differences between the hepatocellular transplantation procedures and the use of the neomycin resistance gene as a marker.

The Human Gene Therapy Subcommittee forwarded this protocol to the Recombinant DNA Advisory Committee for consideration during the May 30–31, 1991, meeting.

V. Amend Section I–C–2 and Delete Section III–A–2 of the "NIH Guidelines" regarding Deliberate Release

On December 6, 1990, the Planning Subcommittee met and made a series of recommendations for the Recombinant DNA Advisory Committee. Among these recommendations was the proposal to amend the *NIH Guidelines* to eliminate the Recombinant DNA Advisory Committee review of experiments involving deliberate environmental release of any organism containing recombinant DNA except certain plants as described in Appendix L. This recommendation reflects the fact that the Recombinant DNA Advisory Committee has not reviewed an experiment of this type for several years. Further, the U.S. Department of Agriculture and the Environmental Protection Agency are reviewing environmental release experiments within the framework of existing regulations.

At the Recombinant DNA Advisory Committee meeting on February 4, 1991, a motion was passed to publish in the **Federal Register** the notice that the Recombinant DNA Advisory Committee is considering relinquishment of review of experiments involving planned environmental release of organisms containing recombinant DNA.

Pending receipt of public comments the Recombinant DNA Advisory Committee will consider this matter further at its meeting on May 30–31, 1991.

Category of Experiments: Experiments that require RAC review and NIH and IBC approval before initiation. Section I–C–2 currently reads:

I–C–2. If they involve deliberate release into the environment or testing in humans of materials containing recombinant DNA developed with NIH funds, and if the institution that developed those materials sponsors or participates in those projects. Participation includes research collaboration or contractual agreements, but not mere provision of research materials.

Proposed amendment of this section reads:

I–C–2. If they involve testing in humans of materials containing recombinant DNA developed with NIH funds, and if the institution that developed those materials sponsors or participates in those projects. Participation includes research collaboration or contractual agreements, but not mere provision of research materials."

Category of Experiments: Experiments that require RAC review and NIH and IBC approval before initiation. Section III–A–2 curently reads:

III–A–2. Deliberate release into the environment of any organism containing recombinant DNA except those listed below. The term '*deliberate release*' is defined as a planned introduction of recombinant DNA-containing microorganisms, plants, or animals into the environment.

III–A–2–a. Introductions conducted under conditions considered to be accepted scientific practices in which there is adequate evidence of biological and/or physical control of the recombinant DNA-containing organisms. The nature of such evidence is described in appendix L.

III–A–2–b. Deletion derivatives and single base changes not otherwise covered by the Guidelines.

III–A–2–c. For extrachromosomal elements and microorganisms (including viruses), rearrangements and amplifications within a single genome. Rearrangements involving the introduction of DNA from different strains of the same species would not be covered by this exemption.

It is proposed to delete this Section III–A–2 in its entirety.

VI. Amend the "Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA into the Genome of Human Subjects"

A. Review Process

In a memorandum dated April 8, 1991, from Dr. W. French Anderson of the National Institutes of Health, he proposes that the Human Gene Therapy Subcommittee be eliminated from the review process involving human gene therapy protocols. These review responsibilities would be totally transferred to the parent committee, the Recombinant DNA Advisory Committee.

In his letter, he states:

Over the past year the RAC has undertaken a review of its mission. Many of its earlier duties are no longer required, but human gene therapy remains as a major responsibility. The RAC has been acquiring over the past several years the expertise to review clinical protocols and, in fact, there is now almost a duplication of review, in some cases by the same people (there are seven individuals who sit on both the Subcommittee and the RAC). I believe that the Subcommittee has now fulfilled its role and should be dissolved. However, the expertise of the Subcommittee members should not be lost. Accordingly, those Subcommittee members with unexpired terms could serve as ad hoc consultants to the RAC until their appointments are completed. By having the national review limited to the RAC, time would be saved in the review process and duplication would be avoided. If the number of RAC meetings were increased to four per year, then the total number of meetings would be reduced from six to four, and the length of the review process would be decreased. Local review, RAC national review, and FDA ongoing review would appear to be more than adequate to insure a thorough oversight. It would seem to be timely for the RAC to consider this possibility.

The proposed amendment to the Introduction, section 4, 6, 7, 9, 10, 12 of the Points to Consider deletes all references to the Subcommittee. The text reads as follows:

(4) A proposal will be considered by the RAC only after the protocol has been approved by the local Institutional Biosafety Committee (IBC) and by the local Institutional Review Board (IRB) in accordance with Department of Health and Human Services (DHHS) Regulations for the Protection of Human Subjects (45 Code of Federal Regulations, Part 46). (If a proposal involves children, special attention should be paid to subpart D of these DHHS regulations.) The IRB and IBC may, at their discretion, condition their approval on further specific deliberation by the RAC. Consideration of proposals by the RAC may proceed simultaneously with review by any other involved federal agencies [1] provided that the RAC is notified of the simultaneous review. Meetings of the Committee will be open to the public except where trade secrets or proprietary information would be disclosed. The committee prefers that the first proposals submitted for RAC review contain no proprietary information or trade secrets, enabling all aspects of the review to be open to the public. The public review of these protocols will serve to inform the public not only on the technical aspects of the proposals but also on the meaning and significance of the research.

(6) Following the Introduction, this document is divided into four parts. Part I requests a description of the protocol with special attention to the short-term risks and benefits of the proposed research to the patient [2] and to other people, the selection of patients, informed consent, and privacy and confidentiality. In part II, investigators are requested to address special issues pertaining to the free flow of information about the clinical trials. These issues lie outside the usual purview of IRBs and reflect general public concerns about biomedical research. Part III summarizes other requested documentation that will assist the RAC in its review of the proposals. Part IV specifies reporting requirements.

(7) The RAC will not at present entertain proposals for germ line alterations but will consider for approval protocols involving somatic cell gene therapy. The purpose of somatic cell gene therapy is to treat an individual patient, e.g., by inserting a properly functioning gene into a patient's somatic cells. In germ line alterations, a specific attempt is made to introduce genetic changes into the germ (reproductive) cells of an individual, with the aim of changing the set of genes passed on to the individual's offspring.

(9) In their evaluation of proposals involving the transfer of recombinant DNA into human subjects, the RAC will consider whether the design of such experiments offers adequate assurance that their consequences will not go beyond their purpose, which is the same as the traditional purpose of all clinical investigations, namely, to protect the health and well-being of the individual subjects being treated while at the same time gathering generalizable knowledge.

Two possible undesirable consequences of the transfer of recombinant DNA would be unintentional: (1) vertical transmission of genetic changes from an individual to his or her offspring or (2) horizontal transmission of viral infection to other persons with whom the individual comes in contact. Accordingly, this document requests information that will enable the RAC to assess the possibility that the proposed experiments will inadvertently affect reproductive cells or lead to infection of other people (e.g., treatment personnel or relatives).

(10) In recognition of the social concern that surrounds the subject of gene transfer, the RAC will cooperate with other groups in assessing the possible long-term consequences of the transfer of recombinant DNA into human subjects and related laboratory and animal experiments in order to define appropriate human applications of this emerging technology.

(12) Investigators should indicate points which are not applicable with a brief explanation. Investigators submitting proposals that employ essentially the same vector systems (or with minor variations), and/or that are based on the same preclinical testing as proposals previously reviewed by the Recombinant DNA Advisory Committee (RAC), may refer to preceding documents without having to rewrite such material."

This proposed amendment will be considered during the Recombinant DNA Advisory Committee May 30–31, 1991, meeting.

B. Preclinical Studies

In a letter dated March 4, 1991, Dr. R. Scott McIvor of the University of Minnesota proposed having more explicit directives for animal model systems and cell culture studies in Section I–B–2 of the Points to Consider.

Section I–B–2 in the Points to Consider currently reads:

2. Preclinical studies, including risk-assessment studies.

Describe the experimental basis (derived from tests in cultured cells and animals) for claims about the efficacy and safety of the proposed system for gene delivery and explain why the model(s) chosen is (are) the most appropriate.

During the Human Gene Therapy Subcommittee meeting of April 5, 1991, the subcommittee recommended the following text change in the Points to Consider:

I–B–2. Preclinical studies, including risk assessment studies. Provide results that demonstrate the safety, efficacy, and feasibility of the proposed procedures using animal and/or cell culture model systems, and explain why the models chosen are the most appropriate.

VII. Amend Appendices B–I–B–1 and B–I–B–2 of the "NIH Guidelines" regarding the Bacterial Order, Actinomycetales.

In a written request dated April 15, 1991, Dr. Diane O. Fleming of Merck & Co., Inc., requested that only pathogenic genera and species of the bacterial order, Actinomycetales, be included in Appendix B–I–B–1 of the NIH Guidelines.

It is proposed that the following pathogens be included under Bacterial Agents in Appendix B–I–B–1 of the NIH Guidelines as follows:

Actinomadura madurae
Actinomadura pelletieri
Actinomyces bovis
Actinomyces israelii
Nocardia asteroides
Nocardia brasiliensis

In Appendix B–I–B–2, the entry under Actinomycetes will be deleted.

This proposed amendment will be considered during the Recombinant DNA Advisory Committee on May 30–31, 1991, meeting.

VIII. Registry of Gene Transfer Patients

In a memorandum dated March 27, 1991, Dr. Fred Ledley requested the Recombinant DNA Advisory Committee to review a proposed registry of gene transfer patients entitled: The Gene Transfer Patient and Provider Network (GENTRANET). Funding for this registry will be requested separately through an application to the Division of Research Grants, NIH.

This document will be considered during the Recombinant DNA Advisory Committee May 30–31, 1991, meeting.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: April 19, 1991.

Jay Moskowitz,

Associate Director for Science Policy and Legislation.

[FR Doc. 91–9998 Filed 4–26–91; 8:45 am]

BILLING CODE 4140–01–M

federal register

Monday
April 29, 1991

Part V

Department of Education

34 CFR Part 668

Student Assistance General Provisions; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840-AB07

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Student Assistance General Provisions regulations to implement a system for determining the immigration status of noncitizen applicants for student financial assistance under title IV of the Higher Education Act of 1965, as amended (title IV, HEA). The purpose of the proposed regulations is twofold: (1) To reduce the potential of fraud and abuse in the title IV, HEA programs by improving the institutions' ability to determine whether these applicants are eligible for title IV, HEA assistance under § 668.7(a)(4)(ii), and (2) to substantially relieve most institutions of the burden of manually inspecting the immigration status documents of all noncitizen applicants for title IV, HEA assistance.

DATES: Comments must be received on or before June 28, 1991.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Adara L. Walton, Acting Chief, Student Verification Branch, Division of Policy and Program Development, U.S. Department of Education, (Regional Office Building 3, room 4613), Washington, DC 20202-5451.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget as the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Claude Denton, Chief, Verification Development Section, Student Verification Branch, Division of Policy and Program Development, U.S. Department of Education, (Regional Office Building 3, room 4613), Washington, DC 20202-5451, Telephone (202) 708-4601.

SUPPLEMENTARY INFORMATION: The Student Assistance General Provisions regulations implement requirements that apply to all institutions that participate in the title IV, HEA student financial assistance programs. For purposes of this subpart, the title IV, HEA programs include the Pell Grant, Stafford Loan, PLUS, Supplemental Loans for Students (SLS), State Student Incentive Grant (SSIG), Income Contingent Loan (ICL), Perkins Loan, College Work-Study (CWS), and Supplemental Educational Opportunity Grant (SEOG) programs.

These regulations are being proposed to reduce the potential of fraud and abuse in the title IV, HEA programs by implementing a system that will help to ensure that only eligible aliens receive Federally-subsidized student financial assistance in accordance with the provisions of § 668.7(a)(4)(ii). The Secretary believes that the proposed immigration status confirmation procedure will assure that Federal student financial assistance dollars are used to provide educational opportunities to U.S. citizens, U.S. nationals, or noncitizens who prove that they possess an immigration status that makes them eligible for title IV, HEA financial assistance. At the same time, the proposed confirmation procedure will relieve most institutions of a substantial portion of the administrative burden currently associated with identifying the immigration status represented on immigration documents and determining whether those documents are authentic.

These proposed regulations would establish procedures for institutions to use in determining the eligibility of noncitizen applicants for title IV, HEA benefits. The term "confirmation" of immigration status as set forth in subpart I is equivalent to the term "verification" of immigration status that is commonly used by the Immigration and Naturalization Service (INS) and other agencies using the INS's immigration status verification system. The Secretary substituted the term "confirmation" in place of the term "verification" in order to avoid confusion with the process of verification of the student's Expected Family Contribution in 34 CFR part 668, subpart E. Therefore, institutions may not count confirmations under subpart I toward the thirty percent verification ceiling mandated by section 484(f) of the Higher Education Act of 1965, as amended (HEA).

Background

A major objective of the Immigration Reform and Control Act of 1986 (Pub. L. 99-603) (IRCA) is to prevent ineligible aliens from receiving benefits through various public assistance programs (including the title IV, HEA programs). In an effort to meet this objective, IRCA amended section 484 of the HEA to provide for the implementation of a procedure whereby all postsecondary institutions would be required to secure from the INS confirmation that each noncitizen applicant for title IV, HEA assistance possessed the immigration status needed to qualify for that assistance. The IRCA amendments specifically directed institutions to use an applicant's alien file or alien admission number to confirm the applicant's immigration status through an automated confirmation system designed by INS for use with institutions. The IRCA confirmation procedure would have required most of the 8000 institutions that participate in the title IV, HEA programs to establish direct electronic access to the INS computerized database.

Section 121(c)(4)(B)(ii) of IRCA further provides that an agency may waive the application of the IRCA amendments to a program covered by the amendments if the agency determined that the costs of administration of the procedure required by IRCA would exceed the estimated savings to be achieved from use of that procedure. On March 28, 1988, the Secretary exercised his authority under IRCA to waive the requirement that institutions use the direct access immigration status confirmation procedure prescribed by IRCA. The Secretary made his decision to waive implementation of the IRCA confirmation requirements as a result of a national pilot study conducted by Department staff showing that the costs of implementing the IRCA direct-access method of confirmation would outweigh any expected savings.

The Secretary maintained, however, that as an alternative to the IRCA direct-access procedure, the Department would explore the use of a centralized matching program between the Department and INS that could accomplish the IRCA objectives in a more cost-effective and efficient manner. The Secretary also maintained that the proposed centralized matching program would relieve most institutions of a significant portion of the administrative burden currently associated with inspecting immigration documents. The alternative procedure, which become operational in January 1989, provides the Department with access to INS data by means of an electronic data exchange between INS and the Department's central processing system, which is operated by an entity under contract with the Department to process most application data for title IV, HEA benefits. These proposed regulations would implement this centralized matching program, as well as a second back-up confirmation procedure to be used if the data exchange does not result in a match or if an application is not processed through the Department's central processing system.

Regulatory Changes

Section 484(a)(5) of the HEA requires, in part, that to be eligible to receive any Federal financial assistance under title IV of the HEA, a student must be a citizen or national of the United States, a permanent resident of the United States, or in the United States for other than a temporary purpose and able to provide evidence from the INS of the student's intent to become a permanent resident. Therefore, to demonstrate eligibility for assistance under the Pell Grant, SEOG, SSIG, Stafford Loan, PLUS, SLS, CWS, ICL, and Perkins Loan programs, § 668.7(a)(4)(ii) requires non-U.S. citizen applicants to provide evidence from the INS that they are permanent residents of the United States or are in the United States for other than a temporary purpose with the intention of becoming citizens or permanent residents of the United States. In order to improve an institution's ability to determine whether a student satisfies the eligibility requirements of § 668.7(a)(4)(ii), the Department has instituted a matching program with the INS, referred to in these rules as primary confirmation, which attempts to match immigration status information from most Federal student financial aid applications with INS data. A match confirms that the INS verification of a student's immigration status indicates that the student meets the citizenship eligibility requirements of title IV student financial assistance and, therefore, fulfills the documentation requirements of § 668.7(a)(4)(ii).

If a claim to eligible immigration status based on data in a student financial aid application is not confirmed by INS data as a result of primary confirmation, the proposed regulations would require the Department to notify the student that the INS did not confirm the student's eligible immigration status. Before taking any action with regard to whether this student, or a student whose application data were not processed by the central processing system, is eligible under § 668.7(a)(4)(ii), institutions would be required to provide the applicant an opportunity to prove his or her eligible noncitizen status by submitting INS documentation of immigration status to the institution. Within ten days after receipt of these documents, the institution would be required to institute a second stage of investigation of the claim; this second step is referred to in these proposed rules as secondary confirmation. To perform secondary confirmation, an institution must submit to the INS the immigration documents provided by the applicant to the institution and request that INS search its other automated or paper files in an effort to determine the immigration status of the student, as well as to evaluate the authenticity of the INS documents provided by the student.

Part 668—Student Assistance General Provisions

Section 668.132 Institutional Determinations of Eligibility Based on Primary Confirmation.

In order to comply with 34 CFR 668.7(a)(4)(ii), a student must provide evidence from the INS that the student's immigration status is an eligible status for purposes of title IV, HEA program aid. Currently, an institution routinely must inspect the immigration documents provided by the student to determine if the student's immigration status is a title IV, HEA-eligible status. An institution then documents its determination of the student's immigration status in the student's financial aid file. The Secretary believes that this manual immigration status determination process is an administratively burdensome and often confusing exercise, and that institutions using the manual process alone do not benefit from INS expertise in detecting forged or altered documents.

These proposed regulations would reduce the administrative burden on the institutions and strengthen the immigration status determination process by substantially replacing this manual confirmation procedure with primary confirmation. Primary confirmation is a procedure that uses the INS's Alien Status Verification Index (ASVI) database, an automated file containing immigration status information for approximately 22 million aliens. Using the primary confirmation procedure, data relating to immigration status that is contained in either an Application for Federal Student Aid or a Multiple Data Entry application filed by a noncitizen is electronically "exchanged" between the Department of Education's central processing system (CPS) and the ASVI database to confirm the student's immigration status and to detect any fraudulent misrepresentations.

To obtain a primary confirmation match, the identifying data and immigration status information on a student's application for Title IV, HEA program aid must correspond to the data located in the ASVI database. The ASVI database is designed so that a match will occur only for those applicants who meet the eligibility requirements of § 668.7(a)(4)(ii). The results of this matching process appear as a message on the output document, which is generated as the result of the processing of data provided in the Application for Federal Student Aid or Multiple Data Entry application. The message printed on the output document varies depending upon whether a match occurred. (If a noncitizen files a financial aid application other than an Application for Federal Student Aid or a Multiple Data Entry application, the application will not be processed by the Department of Education's CPS, the primary confirmation procedure will not occur, and an output document will not be generated.)

For applicants with output documents indicating that a primary confirmation match took place, the proposed rules require no action by institutions other than to recognize the appropriate message on the output document. Because a primary confirmation data match means that an applicant has satisfied the eligibility requirements of section 484(a)(5) of the HEA and § 668.7(a)(4)(ii) of the Student Assistance General Provisions regulations, students with output documents evidencing a primary confirmation match are ordinarily not required by these proposed rules to produce documentation of their immigration status. The institution does require the applicant to produce documentation, however, if the institution has documentation that conflicts with the immigration status reported on the output document or has reason to believe that the immigration status reported on the output document is incorrect.

Based on preliminary evaluations of the results of matching programs already conducted, the Secretary believes that the primary confirmation system will determine that approximately 80% of noncitizen applicants who have their applications processed through the Department's CPS will meet the citizenship requirements for Title IV, HEA program aid, thereby substantially reducing the institutional burden associated with immigration document inspection for these applicants. This reduction in burden, however, would be realized only by institutions with students that use the Application for Federal Student Aid or one of the Multiple Data Entry application processes.

Section 668.133 Conditions Under Which an Institution Shall Require Documentation and Request Secondary Confirmation

An institution shall request INS (1) to perform secondary confirmation for

each student whose output document instructs the student to provide the institution with proof of the student's immigration status and (2) to perform secondary confirmation for each student who did not use either the Application for Federal Student Aid or Multiple Data Entry application process and therefore will not receive an output document. An institution shall request INS to perform secondary confirmation when the institution has received an output document indicating that a student satisfies the eligibility requirements of § 668.7(a)(4)(ii) but the institution has documentation that conflicts with immigration status documents submitted by that student or reported on the output document, or the institution has reason to believe that the immigration status reported by the student or on the output document is incorrect.

An institution is not required to request secondary confirmation for a student who provides evidence of a U.S. citizen status, a U.S. national status, or eligibility under the provisions of § 668.7(a)(4)(iii) or § 668.7(a)(4)(iv).

Section 668.134 Institutional Policies and Procedures for Requesting Documentation and Receiving Secondary Confirmation

An institution shall establish and use written policies and procedures to implement the secondary confirmation process and to assist it in its determination of whether a student meets the eligibility requirements of § 668.7(a)(4)(ii). These policies and procedures must include: (1) Providing the student a deadline by which the student must submit immigration status documentation that the student wishes to have considered to support the claim that the student meets the requirements of § 668.7(a)(4)(ii), (2) the consequences of the student's failure to provide this documentation within the specified time period, and (3) the time period within which the institution will notify a student of the institution's determination regarding the student's eligibility under § 668.7(a)(4)(ii).

An institution's policies and procedures must also provide that the institution will not make a determination that a student is not an eligible noncitizen as defined in § 668.131 until the institution has provided the student an opportunity to submit the documentation in support of the student's claim of eligibility under § 668.7(a)(4)(ii).

An institution must furnish to each student required to undergo secondary confirmation a clear explanation of the documentation needed to satisfy the secondary confirmation requirements, and a clear explanation of the student's responsibilities with respect to providing the evidence of the student's immigration status required under § 668.7(a)(4)(ii), including the deadlines for completing any action required under this subpart and the consequences of failing to complete any required action.

Section 668.135 Institutional Procedures for Completing Secondary Confirmation

For a student required by § 668.133(a) to undergo secondary confirmation, the institution must, within ten business days after it receives the immigration status documents submitted by the student, forward a completed INS Document Verification Request Form G–845, along with a copy (front and back) of the student's immigration status documents submitted by the student, to the appropriate INS District office.

In accordance with its own policies, the INS then completes the response portion of the Form G–845, stating the student's immigration status and whether the student's immigration status documents are valid. INS is expected to return both the Form G–845 and the attached copies of the student's immigration status documents to the institution within ten working days after receipt by INS.

Section 668.136 Institutional Determinations of Eligibility That are not Based on Primary Confirmation

In the majority of cases, the institution shall rely on the response by INS to the Form G–845 to make its determination of whether the student's immigration status is a title IV-eligible immigration status under § 668.7(a)(4)(ii). The Secretary believes that an INS determination of a student's immigration status and the authenticity of the immigration status documents submitted by that student, should precede any decision by the institution with regard to the student's eligibility for title IV, HEA assistance. However, the Secretary does not wish an institution to delay title IV, HEA assistance unduly to a student awaiting a secondary confirmation response from INS when the institution can make a reasonable determination of the student's eligibility under § 668.7(a)(4)(ii) using documents submitted by the student.

Therefore, an institution shall make its determination concerning a student's eligibility under § 668.7(a)(4)(ii) prior to the institution's receipt of an INS response to the institution's Form G–845 request concerning that student, provided that: (1) At least fifteen business days have elapsed from the date the secondary confirmation request was sent to INS; (2) the institution possesses sufficient documentation concerning the student's immigration status to make this determination; (3) the institution has no documentation that conflicts with immigration status documentation submitted by that student; and (4) the institution has no reason to believe that the immigration status data reported by the student is incorrect.

If an institution has disbursed or released Title IV, HEA funds to a student in the award year or employed the student under the CWS program, and the institution determines, in reliance on the INS response to the institution's request for secondary confirmation regarding that student, that the student was in fact not an eligible noncitizen during the award year, the institution must establish and use policies and procedures to ensure that the institution provides the student with notice of the institution's determination, an opportunity to contest the institution's determination, and notice of the institution's final determination.

Section 668.137 Deadlines for Submitting Documentation and the Consequences of Failure to Submit Documentation

A student shall submit all documentation required by § 668.7(a)(4)(ii) to the institution on or before a reasonable deadline to be set by the institution. The deadline set by the institution shall be within the award year for which the student is applying for Pell Grant, SEOG, SSIG, CWS, ICL or Perkins Loan funds, or within the period of enrollment for which the student or parent is applying for Stafford Loan, SLS, or PLUS funds. If the student fails to submit the documentation by the deadline established by the institution, the institution may not disburse to the student, or certify that a student is eligible for, any Title IV, HEA funds for that period of enrollment or award year, employ the student under the CWS Program, or certify a Stafford, PLUS, or SLS loan application for the student for that period of enrollment.

Section 668.138 Liability

A student is liable for any SSIG, SEOG, or Pell Grant payment and for any Stafford, SLS, ICL or Perkins Loan made to the ineligible student. A PLUS Loan borrower is liable for any PLUS loan made to the PLUS Loan borrower on behalf of an ineligible student.

The Secretary does not take any adverse action against an institution with respect to any error in the

institution's determination that a student is an eligible noncitizen if, in making that determination, the institution relied on a confirmation of the student's immigration status or eligibility under § 668.7(a)(4)(ii) as a result of the primary or secondary confirmation process.

If the institution does not rely on an INS confirmation in making its determination that a student is an eligible noncitizen, and the institution makes an error in that determination, the institution is liable for any title IV, HEA disbursements made to this student during the award year for which the student applied for title IV, HEA assistance.

Section 668.139 Recovery of Payments and Loan Disbursements to Ineligible Students

If the institution makes a grant payment or a disbursement of a Perkins loan or ICL to an ineligible student for which it is not liable, it must assist the Secretary in recovering the funds by making a reasonable effort to contact the student and collect the overpayment or ineligible loan disbursement. If the institution causes a Stafford, SLS, or PLUS loan to be disbursed to an ineligible student or PLUS loan borrower for which it is not liable, it must assist the Secretary in recovering the funds by notifying the lender that the student has failed to establish eligibility under the requirements of § 682.201(d).

If an institution is liable for a grant payment or Perkins loan or ICL disbursement to an ineligible student, the institution shall restore the amount equal to the payment or disbursement to the institution's ICL or Perkins loan fund or Pell Grant, SEOG, or SSIG account, even if the institution cannot collect the payment or loan disbursement from the student.

If an institution is liable for a Stafford, SLS or PLUS loan disbursement to an ineligible student, the institution shall restore the amount equal to the disbursement to the Stafford, SLS or PLUS lender and provide written notice to the borrower.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Small entities affected by these regulations are small institutions of higher education. These proposed regulations are intended to reduce the institutional burden caused by manual inspections of immigration status of all noncitizen applicants for title IV, HEA assistance. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 668.133, 668.134 and 668.135 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review.

(44 U.S.C. 3504(h))

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations are available for public inspection, during and after the comment period, in room 4613, ROB–3, 7th and D Streets, SW., Washington, DC 20202–5451, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burden in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

Dated: April 23, 1991.

Lamar Alexander,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: Supplemental Educational Opportunity Grant Program, 84.007; Stafford Loan Program, 84.032; PLUS Program, 84.032; College Work-Study Program, 84.033; Perkins Loan Program, 84.038; Income Contingent Loan Program, 84.226; Pell Grant Program, 84.063; State Student Incentive Grant Program, 84.069)

The Secretary proposes to amend part 668 of title 34 of the Code of Federal Regulations by adding a new subpart I to read as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

* * * * *

Subpart I—Immigration Status Confirmation

Authority: 20 U.S.C. 1091, 1092, and 1094, unless otherwise noted.

* * * * *

Subpart I—Immigration Status Confirmation

§ 668.130 General.

(a) *Scope and purpose.* The regulations in this subpart govern the responsibilities of institutions and students in determining the eligibility of those noncitizen applicants for title IV, HEA assistance who must, under § 668.7(a)(4)(ii), produce evidence from the United States Immigration and Naturalization Service (INS) that they are permanent residents of the United States or in the United States for other than a temporary purpose with the intention of becoming citizens or permanent residents.

(b) *Student responsibility.* Upon the request of the Secretary or the institution at which an applicant for title IV, HEA financial assistance is enrolled or accepted for enrollment, an applicant who asserts eligibility under § 668.7(a)(4)(ii) shall provide documentation from the INS of immigration status.

(Authority: 20 U.S.C. 1091, 1094.)

§ 668.131 Definitions.

The following definitions apply to this subpart:

Eligible noncitizen: An individual possessing an immigration status that meets the requirements of § 668.7(a)(4)(ii).

Immigration status: The status conferred on a noncitizen under the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. 1182.

Output document: The Student Aid Report (SAR), Electronic Student Aid Report (ESAR), other document or automated data generated by the Department of Education's central processing system as the result of the processing of data provided in an Application for Federal Student Aid or Multiple Data Entry application.

Primary confirmation: A process by which the Secretary, by means of a matching program conducted with the INS, compares the information contained in an Application for Federal Student Aid or a Multiple Data Entry application regarding the immigration status of a noncitizen applicant for title IV, HEA assistance with records of that status maintained by the INS in its Alien Status Verification Index (ASVI) system for the purpose of determining whether a student's immigration status meets the requirements of § 668.7(a)(4)(ii), and reports the results of this comparison on an output document.

Secondary confirmation: A process by which the INS, at the request of an institution, searches pertinent paper and automated INS files, other than the ASVI database, for the purpose of determining a student's immigration status and the validity of the INS documents submitted, and reports the results of this search to the institution.

(Authority: 20 U.S.C. 1091.)

§ 668.132 Institutional determinations of eligibility based on primary confirmation.

(a) Except as provided in § 668.133(a)(3), the institution shall determine a student to be an eligible noncitizen if the institution receives an output document for that student establishing that—

(1) The INS has confirmed the student's immigration status; and

(2) The student's immigration status meets the noncitizen eligibility requirements of § 668.7(a)(4)(ii).

(b) If an institution determines a student to be an eligible noncitizen in accordance with paragraph (a) of this section, the institution may not require the student to produce the documentation otherwise required under § 668.7(a)(4)(ii).

(Authority: 20 U.S.C. 1091,1094.)

§ 668.133 Conditions under which an institution shall require documentation and request secondary confirmation.

(a) *General requirements.* Except as provided in paragraph (b) of this section, an institution shall require the student to produce the documentation required under § 668.7(a)(4)(ii) and request the INS to perform secondary confirmation for a student claiming eligibility under § 668.7(a)(4)(ii), in accordance with the procedures set forth in § 668.135 if—

(1) The student's output document indicates that the student must provide the institution with evidence of the student's immigration status required under § 668.7(a)(4)(ii);

(2) The student did not use the Application for Federal Student Aid or a Multiple Data Entry application and, therefore, will not receive an output document as defined in § 668.131; or

(3) The institution receives an output document that satisfies the requirements of § 668.132(a)(1)(2), but the institution—

(i) Has documentation that conflicts with immigration status documents submitted by the student or the immigration status reported on the output document; or

(ii) Has reason to believe that the immigration status reported by the student or on the output document is incorrect.

(b) *Exclusions from secondary confirmation.* The institution may not require the student to produce the documentation required under § 668.7(a)(4)(ii) and may not request that INS perform secondary confirmation, if the student—

(1) Demonstrates U.S. citizen or national status; or

(2) Demonstrates eligibility under the provisions of § 668.7(a)(4)(iii) or (iv).

(Authority: 20 U.S.C. 1091, 1094.)

§ 668.134 Institutional policies and procedures for requesting documentation and receiving secondary confirmation.

(a) An institution shall establish and use written policies and procedures for requesting proof, and securing confirmation, of the immigration status of applicants for title IV, HEA student financial assistance who claim to meet the eligibility requirements of § 668.7(a)(4)(ii). These policies and procedures must include—

(1) Providing the student a deadline by which to provide the documentation that the student wishes to have considered to support the claim that the student meets the requirements of § 668.7(a)(4)(ii);

(2) Providing to the student information concerning the consequences of a failure to provide the documentation by the deadline set by the institution; and

(3) Providing that the institution will not make a determination that the student is not an eligible noncitizen until the institution has provided the student the opportunity to submit the documentation in support of the student's claim of eligibility under § 668.7(a)(4)(ii).

(b) An institution shall furnish, in writing, to each student required to undergo secondary confirmation—

(1) A clear explanation of the documentation the student must submit as evidence that the student satisfies the requirements of § 668.7(a)(4)(ii); and

(2) A clear explanation of the student's responsibilities with respect to the student's compliance with § 668.7(a)(4)(ii), including the deadlines for completing any action required under this subpart and the consequences of failing to complete any required action, as specified in § 668.137.

(Authority: 20 U.S.C. 1091, 1092, 1094.)

§ 668.135 Institutional procedures for completing secondary confirmation.

Within 10 business days after an institution receives the documentation evidence of immigration status submitted by a student required to undergo secondary confirmation, the institution shall—

(a) Complete the request portion of the INS Document Verification Request Form G–845;

(b) Copy front and back sides of all immigration status documents received from the student and attach copies to the Form G–845; and

(c) Submit Form G–845 and attachments to the INS District Office.

(Authority: 20 U.S.C. 1091, 1094.)

§ 668.136 Institutional determinations of eligibility that are not based on primary confirmation.

(a) Except as provided in paragraphs (b) and (c) of this section, an institution shall make its determination concerning a student's eligibility under § 668.7(a)(4)(ii) by relying on an INS response to the Form G–845.

(b) An institution shall make its determination concerning a student's eligibility under § 668.7(a)(4)(ii) pending the institution's receipt of an INS response to the institution's Form G–845 request concerning that student, if—

(1) The institution has given the student an opportunity to submit documents to the institution to support the student's claim to be an eligible noncitizen;

(2) The institution possesses sufficient documentation concerning a student's immigration status to make that determination;

(3) At least 15 working days have elapsed from the date that the institution sent the Form G–845 request to the INS;

(4) The institution has no documentation that conflicts with the immigration status documentation submitted by the student; and

(5) The institution has no reason to believe that the immigration status reported by the applicant is incorrect.

(c) An institution must establish and use policies and procedures to ensure that if the institution has disbursed or released title IV, HEA funds to the student in the award year or employed the student under the CWS program, and the institution determines, in reliance on the INS response to the institution's request for secondary confirmation regarding that student, that the student was in fact not an eligible noncitizen during that award year, the institution provides the student with notice of the institution's determination, an opportunity to contest the institution's determination, and notice of the institution's final determination.

(Authority: 20 U.S.C. 1091, 1094.)

§ 668.137 Deadlines for submitting documentation and the consequences of failure to submit documentation.

(a) A student shall submit before a deadline specified by the institution all documentation the student wishes to have considered to support a claim that the student meets the requirements of § 668.7(a)(4)(ii). The deadline, set by the institution, must be within the award year for which the student is applying for Pell Grant, SEOG, SSIG, CWS, ICL or Perkins Loan funds, or within the period of enrollment for which the student or parent is applying for Stafford Loan, SLS, or PLUS funds.

(b) If a student fails to submit the documentation by the deadline established in accordance with paragraph (a) of this section, the institution may not disburse to the student, or certify the student as eligible for, any title IV, HEA program funds for that period of enrollment or award year, employ the student under the CWS Program, or certify a Stafford, PLUS, or SLS loan application for the student for that period of enrollment.

(Authority: 20 U.S.C. 1091, 1094.)

§ 668.138 Liability.

(a) A student is liable for any SSIG, SEOG, or Pell Grant payment and for any Stafford, SLS, ICL or Perking Loan made to the ineligible student.

(b) A PLUS loan borrower is liable for any PLUS loan made to the PLUS loan borrower on behalf of an ineligible student.

(c) The Secretary does not take any action against an institution with respect to an error in the institution's determination that a student is an eligible noncitizen if, in making that determination, the institution relied on—

(1) An output document for that student indicating that the INS has confirmed that the student's immigration status meets the eligibility requirements for title IV, HEA assistance; or

(2) An INS determination of the student's immigration status and the authenticity of the student's immigration documents, provided in response to the institution's request for secondary confirmation.

(d) Except as provided in paragraph (c) of this section, if an institution makes an error in its determination that a student is an eligible noncitizen, the institution is liable for any title IV, HEA disbursements made to this student during the award year for which the student applied for title IV, HEA assistance.

(Authority: 20 U.S.C. 1091, 1094.)

§ 668.139 Recovery of payments and loan disbursement to ineligible students.

(a) If an institution makes a payment of a grant or a disbursement of a Perkins loan or ICL to an ineligible student for which it is not liable in accordance with § 668.138, it shall assist the Secretary in recovering the funds by—

(1) Making a reasonable effort to contact the student; and

(2) Making a reasonable effort to collect the payment or Perkins loan or ICL disbursement.

(b) If an institution causes a Stafford, SLS, or PLUS loan to be disbursed to an ineligible student or PLUS loan borrower for which it is not liable in accordance with § 668.138, it shall assist the Secretary in recovering the funds by notifying the lender that the student has failed to establish eligibility under the requirements of § 682.201(d).

(c) If an institution is liable for a payment of a grant or Perkins loan or ICL disbursement to an ineligible student, the institution shall restore the amount equal to the payment or disbursement to the institution's ICL or Perkins loan fund or Pell Grant, SEOG, or SSIG account, even if the institution cannot collect the payment or disbursement from the student.

(d) If an institution is liable for a Stafford, SLS or PLUS loan disbursement to an ineligible student, the institution shall restore the amount equal to the disbursement to the Stafford, SLS or PLUS lender and provide written notice to the borrower.

(Authority: 20 U.S.C. 1091, 1094.)

[FR Doc. 91–9987 Filed 4–26–91; 8:45 am]
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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–275–3030).

S.J. Res. 16/Pub. L. 102–35

Designating the Week of April 21-27, 1991, as "National Crime Victims' Rights Week". (Apr. 24, 1991; 105 Stat. 181; 1 page) Price: $1.00

CFR CHECKLIST

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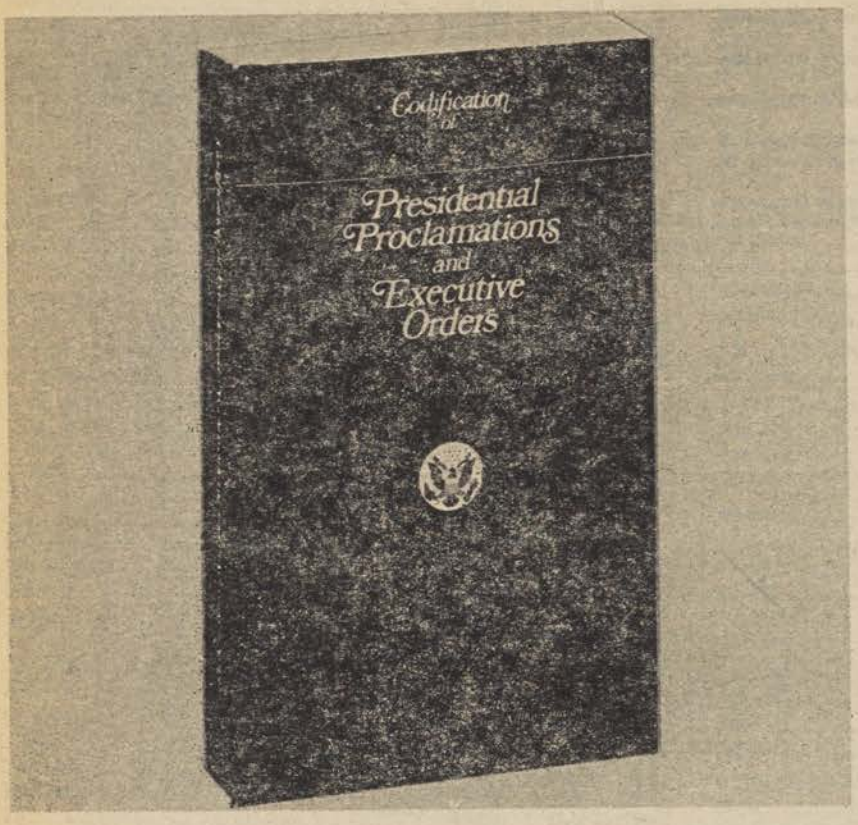

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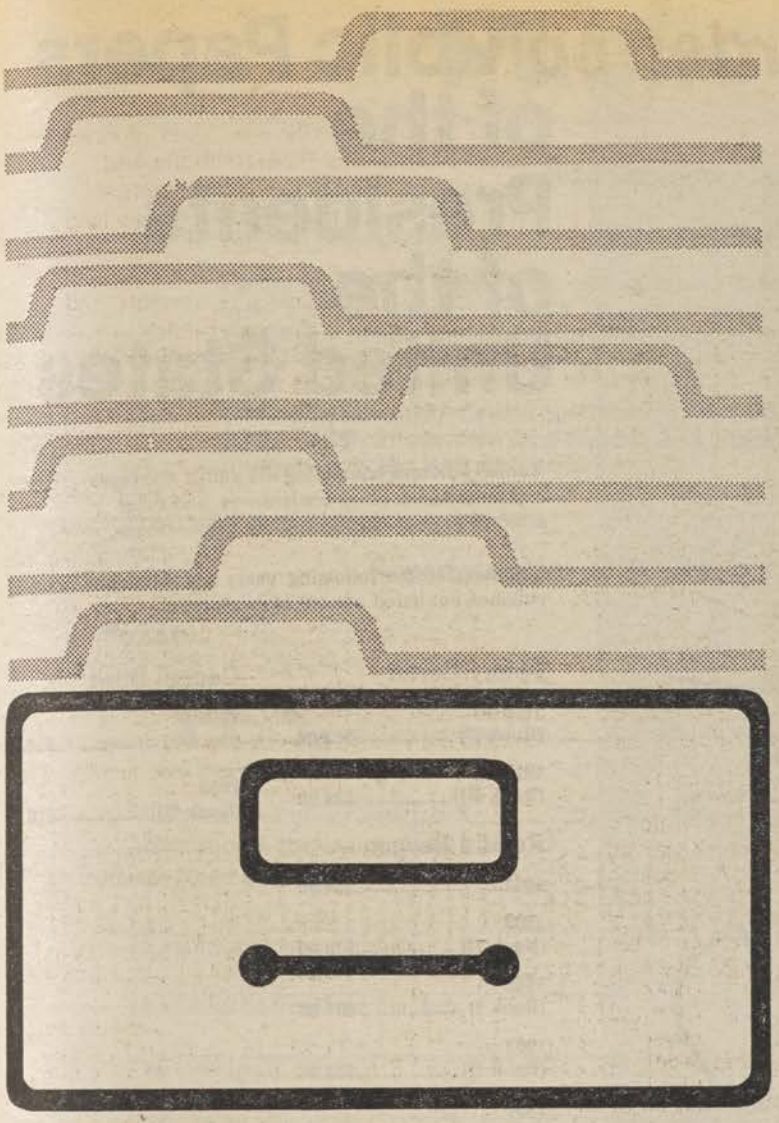

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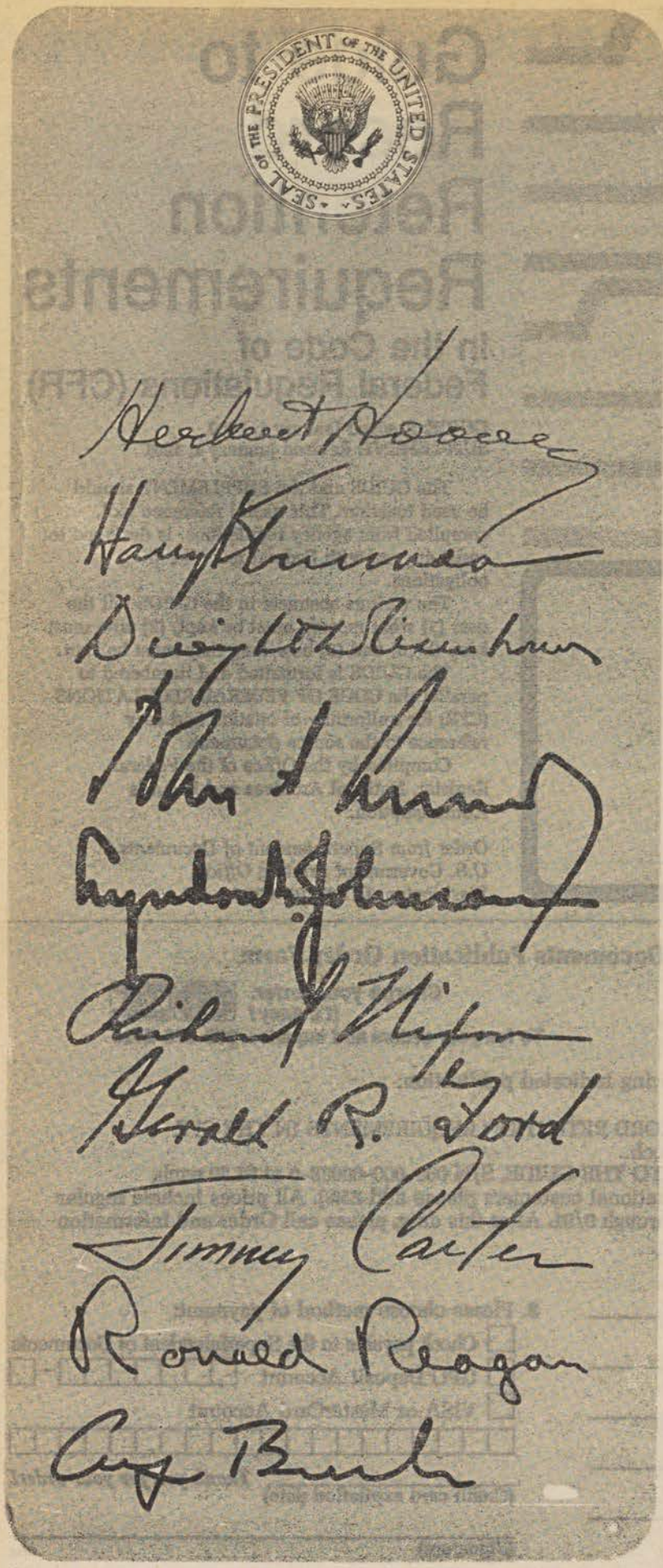

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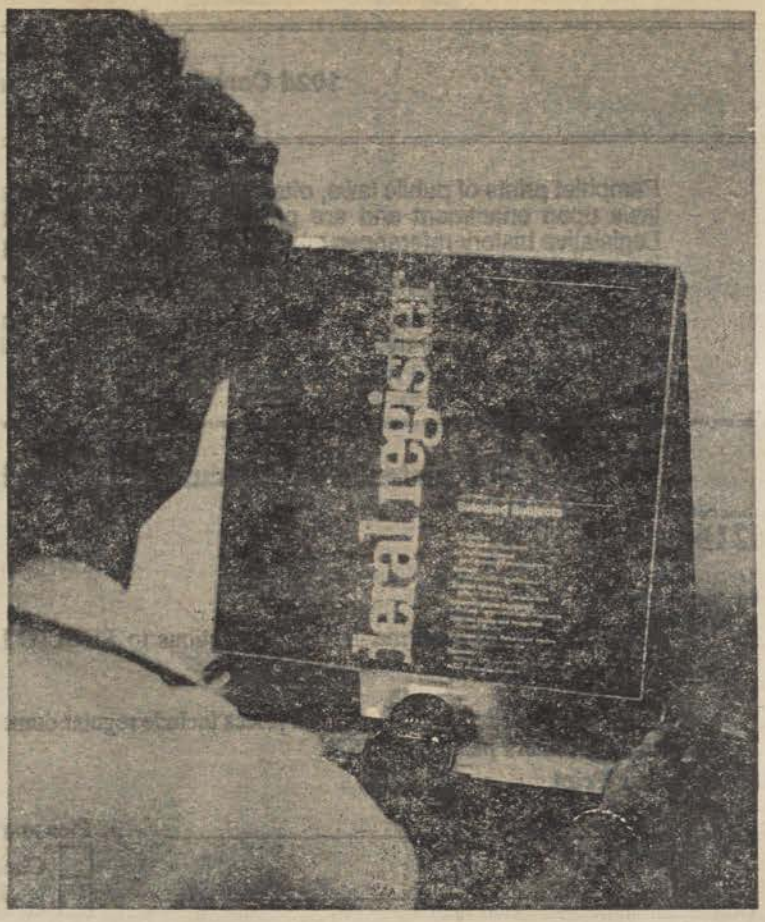

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